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United States v. Ricardo Palos-Marquez

08cr0547-JM

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EXHIBIT A

PRIOR

U.S. Department of Homeland Security

REPORT OF INVESTIGATION

Title Alien Smuggling: Ricardo PALOS-Marquez, Prosecution Decline	File Number Event No: [redacted]	Date 08/07/2007 Report Number
Special Agent: (Name) (Signature) SEAN M. WILSON SUPERVISORY BORDER PATROL AGENT		Office SDC/ECJ
Approved by: (Name and Title) (Signature) RHONDA L. WINFORD FIELD OPERATIONS SUPERVISOR		Office SDC/ECJ

SYNOPSIS
ALIEN SMUGGLING CASE

PRINCIPAL ORGANIZATION CALIXTO [redacted]

NAME Ricardo Ivan PALOS-Marquez A# [redacted] D/POB 06/17/1986 TIJUANA,BAJA CALIFORNIA, MEXICO

ALIAS RACE W SEX M HT 70 WT 200 EYES BRO HAIR BLK

ADDRESS (US) [redacted] FOREIGN [redacted]

IMM STAT Legal Permanent Resident SS# [redacted]

SMUGGLED ALIEN

NAME Sergio REYES-Cebrero A# D/POB [redacted] TIJUANA,BAJA CALIFORNIA, MEXICO

ALIAS RACE W SEX M HT WT EYES BRO HAIR BLK

ADDRESS (US) FOREIGN [redacted]

IMM STAT Inadmissable Alien SS# FI[redacted]

[x] Continued on attached continuation page

ALIENS

NUMBER IN LOAD 8 NATIONALITY 1 GUATEMALA 7 MEXICO INTENDED DEST San Diego, California

CHARGE PER ALIEN Avg. $1,818.75 DATE/PLACE OF ENTRY 08/06/2007 'Zullners Gulch' Campo, CA

PLACE OF ARREST Interstate 8 westbound, east of Main Street Exit El Cajon CA

DATE OF ARREST 08/07/2007 2130 ARRESTING OFFICER SEAN M. WILSON

VEHICLE(S) USED 1992 FORD EXPLORER WHI VINN: 1FMDU32X2NUD76406 LIC# CA/4BDN091

TOTAL NUMBER OF PRINCIPALS/ASSOCIATES 1 DEPORTABLE/INADMISSABLE 0 NON-DEPORTABLE 1

TOTAL NUMBER OF CONVEYANCES SEIZED 1 ESTIMATED TOTAL VALUE $4,425.00

RECRUITING PROCEDURES-TRAVEL TO BORDER AREA-TO WHOM PAYMENT MADE-STAGING AREAS-MANNER OF ENTRY DROP HOUSES-HOW CHECKPOINTS AVOIDED-ROUTE TO POINT OF ARREST-CONTACTS AT DESTINATION

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Alien's Name	File Number	Date
	[redacted] Event No: [redacted]	08/07/2007

SMUGGLED ALIEN
NAME Eliot MOYA-Mendoza A# [redacted] D/POB [redacted] APACINGAN,MICHOACAN, MEXICO
ALIAS RACE W SEX M HT 71 WT 180 EYES BRO HAIR BLK
ADDRESS (US) IN DHS CUSTODY FOREIGN [redacted]
IMM STAT Inadmissable Alien SS# FIN [redacted]

SMUGGLED ALIEN
NAME Fernando ISQUIRDO-Ohara A# D/POB [redacted] MORELIA,MICHOACAN, MEXICO
ALIAS RACE W SEX M HT 69 WT 170 EYES BRO HAIR BLK
ADDRESS (US) FOREIGN [redacted]
IMM STAT Inadmissable Alien SS# FIN [redacted]

SMUGGLED ALIEN
NAME Eloy ROMERO-Jeronimo A# [redacted] D/POB [redacted] ZAMORA,MICHOACAN, MEXICO
ALIAS RACE W SEX M HT 66 WT 175 EYES BRO HAIR BLK
ADDRESS (US) FOREIGN [redacted]
IMM STAT Inadmissable Alien SS# FIN [redacted]

SMUGGLED ALIEN
NAME Luis Diego RAMOS-PENA A# D/POB [redacted] COLIMA MONTENIA,COLIMA, MEXICO
ALIAS RACE W SEX M HT 66 WT 140 EYES BRO HAIR BLK
ADDRESS (US) FOREIGN [redacted]
IMM STAT Inadmissable Alien SS# FIN [redacted]

SMUGGLED ALIEN
NAME Willian Edmundo QUINTANA-Giron A# [redacted] D/POB [redacted] GUATEMALA, GUATEMALA
ALIAS RACE W SEX M HT 65 WT 185 EYES BRO HAIR BLK
ADDRESS (US) IN DHS CUSTODY FOREIGN [redacted]
IMM STAT Inadmissable Alien SS# FIN [redacted]

...(CONTINUED ON NEXT PAGE)

Signature	Title
SEAN M. WILSON	SUPERVISORY BORDER PATROL AGENT

U.S. Department of Homeland Security **Continuation Page for Form** G166F

Alien's Name	File Number	Date
	[redacted] Event No: [redacted]	08/07/2007

SMUGGLED ALIEN

NAME Jose GRAMAJO-Garcia A# [redacted] D/POB TIJUANA,BAJA CALIFORNIA, MEXICO

ALIAS RACE W SEX M HT WT EYES BRO HAIR BLK

ADDRESS (US) FOREIGN [redacted]

IMM STAT Inadmissable Alien SS# FIN [redacted]

SMUGGLED ALIEN

NAME Cesar JUAREZ-Juarez A# [redacted] D/POB IRAPUATO,GUANAJUATO, MEXICO

ALIAS RACE W SEX M HT 66 WT 150 EYES BRO HAIR BLK

ADDRESS (US) FOREIGN [redacted]

IMM STAT Inadmissable Alien SS# FIN [redacted]

Narrative: Report of Investigation

On August 7, 2007 agents of the Smuggling Interdiction Group (SIG) were performing anti-smuggling operations near Pine Valley, California. Pine Valley is located approximately twelve miles north and twelve miles east of the Tecate, California Port of Entry. Agents were conducting operations in unmarked Bureau vehicles and in plain-clothes.

At approximately 9:30 PM, Supervisory Border Patrol Agent Sean Wilson was in a stationary position on the westbound lanes of Interstate 8 approximately two miles east of the Japatul Valley Road Exit when he observed a white Ford Explorer pass his location. Agent Wilson noticed that the vehicle was riding extremely low to the ground as if it was carrying a heavy load in the rear cargo area. Alien smugglers use sport utility vehicles and vans like the Explorer to transport large amount of illegal aliens. Agent Wilson saw that the driver and front seat passenger were sitting upright and wearing their seatbelts. Agent Wilson initiated mobile surveillance of the vehicle as it traveled west on Interstate 8.

Agent Wilson ran the Explorer's license plate, CA license #4BDN091, through Border Patrol Dispatch. Records revealed a pending master file record of the Explorer to Christian or Alfredo JIMENEZ-Aguilar at [redacted] Agent Wilson continued to follow the Explorer discreetly at a distance as it traveled westbound on I-8. Agent Wilson observed that the driver, later identified as PALOS-Marquez, Ricardo, traveled in and out of the designated lane of travel and that the Explorer was swaying from side to side as if heavily laden. Agent Wilson believed that the movements of the frame of the Explorer were caused by extra weight in the vehicle, as there was no wind at that time. Agent Wilson observed what he believed to be a human head emerge briefly from the backseat and then quickly disappear. Agent Wilson continued to follow the Explorer, communicating his direction of travel and observations to other agents.

At approximately 10:00 PM, Senior Patrol Agent Brian Wakefield performed a vehicle stop utilizing his vehicle's emergency lights and siren approximately one half mile east of the Main...(CONTINUED ON NEXT PAGE)

Signature	Title
SEAN M. WILSON	SUPERVISORY BORDER PATROL AGENT

U.S. Department of Homeland Security

Continuation Page for Form G166F

Alien's Name	File Number [redacted] Event No: [redacted]	Date 08/07/2007

Street exit on Interstate 8 near El Cajon, California. PALOS continued traveling for approximately one mile and then pulled to the center shoulder of Interstate-8 and stopped the Explorer. Agents Wilson and Wakefield approached the Explorer with their badges hanging from lanyards around their necks. SPA Wakefield was wearing a Bureau issued tactical vest bearing the insignia POLICE FEDERAL AGENT. Agent Wilson and Wakefield used their flashlights to illuminate the interior of the Explorer and observed four people in the rear cargo area and three people in the backseat attempting to remain concealed. Agent Wilson instructed PALOS to turn the vehicle off. Agents Wilson and Wakefield identified themselves as Border Patrol agents and questioned the occupants as to their citizenship. All of the people in the Explorer stated that they were nationals and citizens of Mexico without immigration documents allowing them to enter or remain in the United States legally. All of the illegal aliens in the Explorer were arrested and transported to the El Cajon Station for processing. The white Explorer was processed for seizure as an alien smuggling coneyance.

At the El Cajon Border Patrol Station, fingerprints and biographical data from PALOS and each of the illegal aliens were entered into the ENFORCE and IDENT/IAFIS data systems. The following immigration and criminal records were returned for PALOS as a result of fingerprint matching.

Ricardo Ivan PALOS-Marquez, DOB 06/17/1986
[redacted] (Legal Permanent Resident bearing I-90), FBI [redacted] SID [redacted] FINS [redacted] SSN [redacted]

Defendant Statement: PALOS

PALOS provided a post-Miranda sworn statement a synopsis of which follows. PALOS was advised of his Miranda rights as per Bureau issued I-214 Miranda rights card on August 8, 2007 at approximately 1:00 a.m. PALOS said he understood his rights and answered questions without the presence of an attorney. PALOS last entered the United States from Mexico approximately one month ago after presenting a valid Mexican Passport with a validated I-90 at the San Ysidro, California Port of Entry. PALOS has worked as an alien smuggler for the last two years in the Pine Valley and Jamul, California areas. PALOS said he was previously apprehended while accompanying a pair of alien smugglers in the Jamul area. PALOS said he was in training at the time and was learning the routes of travel and how to spot anti-smuggling agents. PALOS was arrested on 04/18/2006 [redacted] while smuggling twenty-five illegal aliens with the two other smugglers. PALOS and the two smugglers were working for the CALIXTO'S and were to smuggle the twenty-five aliens to Corona, California. PALOS identified Noe Andres CALIXTO and Javier CALIXTO as the organizational smugglers that have employed him over the last two years.

The CALIXTO'S provide smuggling conveyances for PALOS. The CALIXTO'S contact PALOS with the time, date, and location where smuggled aliens await the smuggling conveyance. PALOS usually smuggles the aliens to Corona, California. PALOS travels north on Interstate 15 to the exit north of Highway 91 where he exits and stops near a large department store near Intestate 15. PALOS turns the aliens over to unidentified smugglers that further smuggle the aliens to their destinations.

PALOS has smuggled illegal aliens, usually groups of five to ten aliens, two or three times per month over the last two years. The CALIXTOS pay PALOS approximately $75.00 per smuggled alien. CALIXTO, Noe Andres DOB 01/20/1985, Drivers license [redacted]. Records checks for Javier CALIXTO were negative. Nextel two-way radio numbers for the CALIXTO'S were found in PALOS'...(CONTINUED ON NEXT PAGE)

Signature	Title
SEAN M. WILSON	SUPERVISORY BORDER PATROL AGENT

U.S. Department of Homeland Security — Continuation Page for Form G166F

Alien's Name	File Number [redacted] Event No: [redacted]	Date 08/07/2007

Nextel phone. PALOS identified the numbers as belonging to the CALIXTO'S, 121*148*9851 (Javier "GARZA") and 126*964*8871 (Noe "Huevo"). The interview was subsequently concluded.

Criminal Alien (8 USC 1326 Prosecution): Eliot MOYA-Mendoza
Smuggled alien MOYA is a previously removed criminal alien and is being held in DHS custody pending prosecution for 8 USC 1326. The following numbers were assigned to MOYA: [redacted]

On August 7, 2007 at approximately 11:30 pm, Eliot MOYA-Mendoza, provided Senior Patrol Agent G. Medina with a sworn videotaped statement in the English Language, which in summary depicts the following:

MOYA stated that he is a citizen of Mexico and that he was born in Nueva Italia, Michoacan. He stated that he does not have any immigration documents to enter the United States legally. He admitted to crossing into the United States illegally on Friday, August 3, 2007 through the mountains near Tecate, California. MOYA stated that the judge told him he had to wait three years to come back into the United States after he was deported. MOYA admitted that he served time in jail for his prior convictions.

On August 7, 2007 at approximately 11:35 pm, MOYA was advised of his consular communication rights in the English language by Agent Medina and witnessed by Agent Martinez. The interview concluded at approximately 11:46 pm.

Smuggled alien statements:
The following information was obtained during the course of the interviews of the smuggled aliens. They stated that they crossed yesterday approximately 6 AM near the Tecate, California Port of Entry. They stated they were picked up in the same white Explorer and driven to an unknown location. They were dropped off and walked for approximately 3-4 hours through the mountains to a pre-determined location. They waited there all night and all day today until the white Explorer returned and picked them up. They stated that they were going pay between $1500-$1800 to be smuggled to San Diego, CA and Los Angeles, CA.

JUAREZ-Juarez, Cesar, one of the smuggled aliens, was found to have the following numbers assigned to him: [redacted] JUAREZ was arrested for Under the Influence of a Controlled Substance. SBPA Wilson reviewed the records and granted JUAREZ a voluntary return to Mexico.

ROMERO-Jeronimo, Eloy, one of the smuggled aliens, was found to have the following numbers assigned to him: [redacted] ROMERO was found to have a minimal criminal and immigration record. SBPA Wilson reviewed the record checks and granted ROMERO a voluntary return to Mexico.

QUINTANA-Giron, Willian Edmundo, one of the smuggled aliens, was found to be a national and citizen of Guatemala. QUINTANA was processed for Removal Proceedings and held in DHS custody pending removal.

MOYA is being held in DHS custody pending prosecution for 8 USC 1326, Re-entry after Removal.

Prosecution of PALOS for alien smuggling was declined. PALOS was interviewed and released.

The remaining six subjects were requested and were granted a voluntary return to Mexico.
...(CONTINUED ON NEXT PAGE)

Signature	Title
SEAN M. WILSON	SUPERVISORY BORDER PATROL AGENT

EXHIBIT B

U.S. Department of Justice
Immigration and Naturalization Service

REPORT OF INVESTIGATION

Title	File Number	Date
ALIEN SMUGGLING	Case no: [redacted]	02/07/2008
		Report Number
Special Agent: *(Name)* RAY PADRON	*(Signature)*	Office SDC/BRF
Approved by: *(Name and Title)* ZACH FREEMYER SUPERVISORY BORDER PATROL AGENT	*(Signature)*	Office SDC/BRF

SYNOPSIS
ALIEN SMUGGLING CASE

PRINCIPAL ORGANIZATION
NAME Ricardo PALOS-Marquez A# [redacted] D/POB 06/17/1986 TIJUANA, BAJA CALIFORNIA, MEXICO
ALIAS RACE W SEX M HT 62 WT 140 EYES BRO HAIR BLK
ADDRESS (US) [redacted] FOREIGN [redacted]
IMM STAT Legal Permanent Resident SS# 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 FINS: [redacted]

SMUGGLED ALIEN
NAME Apolinar SANTOS-De Asis A# [redacted] D/POB [redacted] ALQUILA, MICHOACAN, MEXICO
ALIAS RACE W SEX M HT 65 WT 160 EYES BRO HAIR BLK
ADDRESS (US) IN DHS CUSTODY FOREIGN [redacted]
IMM STAT Inadmissable Alien SS# FINS [redacted]

SMUGGLED ALIEN
NAME Perfecto TOTO-Cruz A# [redacted] D/POB [redacted] CAMPO NUEVO, VERACRUZ, MEXICO
ALIAS RACE W SEX M HT 72 WT 215 EYES BRO HAIR BLK
ADDRESS (US) [redacted] FOREIGN
IMM STAT Inadmissable Alien SS# FINS [redacted]

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ALIENS
NUMBER IN LOAD 4 NATIONALITY 4 MEXICO INTENDED DEST San Diego, California
CHARGE PER ALIEN Avg. $825.00 DATE/PLACE OF ENTRY 02/07/2008 Otay Mesa, California
PLACE OF ARREST 125 N ONRAMP OFF OF OTAY LAKES RD. CHULA VISTA, CA
DATE OF ARREST 02/07/2008 1720 ARRESTING OFFICER RAY PADRON
VEHICLE(S) USED 1996 DODGE RAM 1500 DGR VIN: 3B7HC13YXTG165748 LIC# CA/7R41895

TOTAL NUMBER OF PRINCIPALS/ASSOCIATES 1 DEPORTABLE/INADMISSABLE 0 NON-DEPORTABLE 1
TOTAL NUMBER OF CONVEYANCES SEIZED 1 ESTIMATED TOTAL VALUE $4,675.00

RECRUITING PROCEDURES-TRAVEL TO BORDER AREA-TO WHOM PAYMENT MADE-STAGING AREAS-MANNER OF ENTRY DROP HOUSES-HOW CHECKPOINTS AVOIDED-ROUTE TO POINT OF ARREST-CONTACTS AT DESTINATION

Form G-166 (Rev. 9-1-85) N

U.S. Department of Justice
Immigration and Naturalization Service

Continuation Page for Form G-166F

Alien's Name	File Number Case no: [redacted]	Date 02/07/2008

SMUGGLED ALIEN
NAME Vicente ALVARADO-Victoria A# [redacted] D/POB [redacted] GUADALAJARA, JALISCO, MEXICO
ALIAS RACE W SEX M HT 65 WT 150 EYES BRO HAIR BRO
ADDRESS (US) IN DHS CUSTODY FOREIGN
IMM STAT Inadmissable Alien SS# FINS: [redacted]

SMUGGLED ALIEN
NAME Francisco DIEGO-BENABE A# [redacted] D/POB [redacted] QUINITARIO, CHIAPAS, MEXICO
ALIAS RACE W SEX M HT 63 WT 140 EYES BRO HAIR BLK
ADDRESS (US) IN DHS CUSTODY FOREIGN [redacted]
IMM STAT Inadmissable Alien SS# FINS: [redacted]

On February 07, 2008, at approximately 5:00pm, Border Patrol Agent Ray C. Padron was conducting line watch operations in the vicinity of Jamul, California. This area is very desolate and is located approximately three miles east of the Otay Mesa, California Port of Entry, and approximately five miles north of the International Boundary between Mexico and the United States. This area is a common route of travel for illegal aliens to further their entry into the United States and also for illegal alien smugglers to pick up illegal aliens hiding in the brush along the side of the road.

Agent Padron responded to a call from Border Patrol Agent Myles Staunton about a vehicle that was driving erratically and had possibly loaded with illegal aliens driving westbound on Otay Lakes Road from the "Riding and Hiking Gate". Agent Staunton described the vehicle as a green Dodge Ram pick-up, and a few minutes later, Agent Padron noticed a vehicle driving westbound at the four mile marker on Otay Lakes Road that matched the vehicle description. Agent Padron also overheard Agent Salem Simon state via radio that a UPS driver had witnessed several suspected illegal aliens get into the vehicle. Agent Padron began following the vehicle and called dispatch to run vehicle checks for a 1996 Dodge Ram pickup truck. (CA Li[redacted]

Agent Padron continued to follow the vehicle westbound on Otay Lakes Road. After receiving vehicle checks from dispatch, Agent Padron activated his emergency overheads and shortly thereafter the driver yielded at the State Route 125 North onramp off of Otay Lakes Road. The vehicle came to a complete stop and Agent Padron walked over to the driver side door and identified himself as a Border Patrol Agent and then asked the driver his citizenship. The driver, later identified as PALOS-Marquez, Ricardo stated that he is a legal permanent resident. Agent Padron then noticed four individuals lying down in the back seat of the cabin bay.

Agent Padron questioned the four individuals in the back seat as to their immigration status. All four individuals admitted to being nationals and citizens of Mexico illegally present in the United States without proper documents. All four individuals along with the driver PALOS were arrested at 5:20 p.m and transported to the Brown Field

Signature	Title
RAY PADRON	BORDER PATROL AGENT

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Immigration and Naturalization Service — Continuation Page for Form G-166F

Alien's Name	File Number Case no: [redacted]	Date 02/07/2008

Station for further processing.

Agent Munoz (G-65) and Agent Finn (G-70) of the San Diego Sector BIC team also assisted with the vehicle stop and arrest on the SR125 north onramp. Agent Munoz and Agent Finn became clear of the scene only after all individuals were under arrest and the scene was safe.

At the station, PALOS and the other subjects were routinely processed. PALOSand the other subjects were entered into various processing systems. Record checks revealed the following for PALOS:

Criminal:
FBI# [redacted]
SID# [redacted]

Immigration:
A# [redacted]
FINS# [redacted]

Record checks also revealed an active misdemeanor warrant for PALOS with the San Diego Sheriff's Office. San Diego County Sheriff's dispatch was called, dispatcher #166, at 8:40 p.m and declined to extradite on the warrants.

DEFENDANT STATEMENT:

Border Patrol Agent Ellioth Gallina advised the defendant PALOS-Marquez, Ricardo of his Miranda rights as per Agency form I-214 at 11:00 PM. Senior Patrol Agent Juan Angeli and Border Patrol Agent Cesar Martinez witnessed this event. PALOS stated he understood his rights and was willing to answer questions without the presence of a lawyer. PALOS was also advised that he had the right to talk to a consular officer of his native country, Mexico. PALOS stated he wished to exercise his right to speak to the Mexican Consulate at this time, and PALOS was given an opportunity to speak with the consulate at a later time.

PALOS further stated he had a Lawfully Admitted for Permanent Resident Card that he acquired through his parents ten years ago but had lost it. PALOS stated that he made arrangements to transport illegal aliens with a person who he had known for five years. PALOS stated that he didn't know the name of this person. PALOS stated that he made the arrangements in City Heights at an Exxon gas station. PALOS stated that he was going to be paid about $50 dollars per illegal alien. He stated that he had previously smuggled six times before and had been arrested three times. PALOS stated that each smuggling event was coordinated with different individuals. He further stated that the truck he was driving did not belong to him and didn't know who the owner of the vehicle was. PALOS stated that he knew the people he picked up on the road were illegally in the country and agreed to transport them further north for payment. PALOS was asked if he wanted to add anything else, but he refused.

Signature	Title
RAY PADRON	BORDER PATROL AGENT

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Continuati_e for Form G-166F

Alien's Name	File Number Case no: [redacted]	Date 02/07/2008

PALOS was asked if he would like to retain any of the smuggled aliens as witnesses on his behalf. PALOS declined to retain any of the smuggled aliens and signed the witness retention form.

At approximately 11:26 pm, the interview ended.

PALOS is being charged for violation of 8 USC 1324 Alien Smuggling and is being held pending Removal proceedings. PALOS was served with Agency forms I-286, I-862, and I-200.

MATERIAL WITNESS STATEMENT:

Name: SANTOS-DeAsis, Apolinar
Location: Brown Field Border Patrol Station, San Diego, California.
Time/Date: 11:41 PM February 7, 2008
Taken By: BPA Ellioth Gallina
Witnessed By: BPA Cesar Martinez

On February 7, 2008, at approximately 11:41 PM, at the Brown Field Border Patrol Station in San Diego, California, SANTOS-DeAsis, Apolinar provided a videotaped sworn statement in the Spanish Language, which in summary depicts the following:

SANTOS stated that he is not under the influence of any drugs or alcohol. SANTOS was notified of his right to speak with a consular officer of his country of origin, Mexico. SANTOS stated that he is a citizen and national of Mexico. SANTOS was born in Michoacan, Mexico on [redacted] SANTOS admitted to crossing into the United States illegally east of the Otay Mesa, California Port-of-Entry. SANTOS stated that he met with three other acquaintances in Tijuana, Mexico and all four agreed to cross into the United Stats through Tijuana, Mexico. He stated he was not guided by anyone nor was he going to pay any smuggling organization. SANTOS states his planned destination was Washington. SANTOS stated he knew it was illegal to cross into the United States.

SANTOS stated the group attempted to flag someone down, after which PALOS-Marquez, Ricardo stopped and told them to get in. SANTOS states he had never met the driver before today, but he knows the driver was arrested with the group. SANTOS stated that he entered into the passenger side door and immediately laid down behind the passenger seat. SANTOS feared for his life because he knew it was dangerous to get picked up by strangers. SANTOS also stated that he has family in the United States that would pay to have him brought into the U.S. but he did not know how much or to whom they would pay. He said that he has an American phone that he purchased four months ago before he was deported. He also stated that in this phone he has numbers to contact his family in the U.S.

SANTOS stated that he brought food and clothing into the U.S. and that he had no material exchange until we apprehended him. SANTOS also stated that if he was given the chance he could identify the driver.

The interview was terminated at 12:09 a.m. on February 8, 2008.

Signature RAY PADRON	Title BORDER PATROL AGENT

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U.S. Department of Justice
Immigration and Naturalization Service

Continuation Page for Form G-166F

Alien's Name	File Number Case no: [redacted]	Date 02/07/2008

On February 8, 2008 at approximately 11:30 p.m SANTOS was shown a lineup composed of six individuals' photographs. SANTOS was able to correctly identify PALOS as the driver of the smuggling load.

SANTOS is being held in DHS custody for removal proceedings as a material witness in the case US vs. PALOS-Marquez, Ricardo.

MATERIAL WITNESS STATEMENT:

Name:TOTO-Cruz, Perfecto
Location: Brown Field Border Patrol Station, San Diego, California
Time/Date: 10:26 p.m February 7, 2008
Taken By: Border Patrol Agent Ellioth Gallina
Witnessed By: Border Patrol Agent Cesar Martinez

On February 7, 2008, at approximately 10:26 p.m at the Brown Field Border Patrol Station, San Diego, California TOTO-Cruz, Perfecto provided a video taped sworn statement in the spanish language which in summary depicts the following:

TOTO stated that he was not under the influence of any drugs or alcohol. TOTO was notified of his right to speak with a consular officer of his origin of country (Mexico).

TOTO stated that he is a citizen of Mexico. TOTO was born in Veracruz, Mexico on [redacted] TOTO admitted to crossing into the United States illegally. TOTO stated that he had no legal immigration documents that would allow him to be in or remain in the United States legally. TOTO stated that he arrived in Tijuana, Mexico for the sole purpose of crossing into the United States illegally. TOTO stated that on February 7, 2008, at approximately 7:00 a.m, he had crossed over the United States/ Mexico International boundary east of the Otay Mesa, California Port-of-Entry with three other individuals. TOTO claimed that the group walked through the mountains until reaching their final resting point on the side of Otay Lakes Road. TOTO stated his destination was Los Angeles, California. TOTO denied to have met all three individuals prior to crossing the United States/Mexican Border. TOTO denied to have made any smuggling arrangements with anyone.

TOTO admitted that he had crossed into the United States illegally once before through the Nogales Border.

TOTO stated that the group attempted to flag someone down in San Diego, California. TOTO stated that the driver of the green truck stopped and agreed to transport them to a nearby city. TOTO said that he boarded the vehicle and immediately laid down behind the driver's seat. TOTO stated he had never met the driver before today, but he knew the driver was arrested with the group. TOTO also stated that if he was given the chance he could identify the driver.

TOTO stated that he brought food and clothing into the U.S. and that he had no material

Signature RAY PADRON	Title BORDER PATROL AGENT

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U.S. Department of Justice
Immigration and Naturalization Service Continuation Page for Form G-166F

Alien's Name	File Number Case no: [redacted]	Date 02/07/2008

change in these items until we apprehended him.

TOTO was asked if he wanted to add any other statements, and he declined. The interview ended at approximately 10:49 p.m. on February 7, 2008.

On February 8, 2008, at approximately 11:35 p.m TOTO was shown a lineup composed of six individuals' photographs. TOTO was able to correctly identify PALOS as the driver of the smuggling load.

TOTO is in DHS custody for removal proceedings as a material witness in the case US vs. PALOS-Marquez, Ricardo.

MATERIAL WITNESS STATEMENT:

Name: ALVARADO-Victoria, Vicente
Location:Brown Field Border Patrol Station, San Diego, California.
Time/Date: 1:05 a.m. February 8, 2008
Taken By: Border Patrol Agent Cesar Martinez
Witnessed By: Border Patrol Agent Ellioth Gallina

On February 8, 2008, at approximately 1:05 a.m. at the Brown Field Border Patrol Station in San Diego, California, ALVARADO-Victoria, Vicente provided a videotaped sworn statement in the Spanish Language, which in summary depicts the following:

ALVARARO stated that he was not under the influence of any drugs or alcohol. ALVARADO was notified of his right to speak with a consular officer of his country of origin, Mexico.

ALVARADO stated that he is a citizen of Mexico. ALVARADO stated that he was born in Jalisco, Mexico on [redacted] ALVARADO admitted to crossing into the United States illegally. ALVARADO stated that he has no legal documentation to be present or remain in the Unites States legally. ALVARADO stated that he arrived in Tijuana, Mexico with the purpose of crossing into the United States illegally. ALVARADO said that on Thursday February 7, 2008, he crossed the United States/Mexico border east of the Otay Mesa, California Port-of-Entry with approximately three other individuals. ALVARADO claimed that the group walked through the mountains for six hours until reaching their final resting point near the side of the road. ALVARADO stated that his planned destination was Seattle, Washington.

ALVARADO stated that he made smuggling arrangements through a male named, "EL JEFE", at the Yaneros Hotel of Tijuana. ALVARADO's relatives were going to pay $1,800 upon his arrival in Los Angeles. No money was paid in advance. ALVARADO claimed that he shared a room and board with some individuals for three days while he waited to be smuggled into the United States.

ALVARADO crossed through the mountains near Tecate, California and was guided by an unknown foot guide named, "JOSE". ALVARADO stated that the foot guide and three other

Signature	Title
RAY PADRON	BORDER PATROL AGENT

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individuals walked though the mountains. ALVARADO also said that they flagged PALOS-Marquez, Ricardo, the driver of the green truck near San Diego, California and he told them to board the vehicle. ALVARADO said that he boarded the vehicle immediately. ALVARADO stated he had never met the driver before today, but he knew that the driver was arrested with the group. The driver kept telling them to be quiet. ALVARADO also stated that if given the chance he could identify the driver.

ALVARADO stated that he brought food and clothing into the United States and that none of these items had materially changed during his trip.

ALVARADO was asked if he wanted to add any other statements, and he declined. The interview ended at approximately 1:24 am. February 8, 2008.

On February 8, 2008, at approximately 11:45 p.m ALVARADO was shown a lineup composed of six individuals' photographs. ALVARADO was not able to correctly identify PALOS as the driver of the smuggling load.

ALVARADO is in DHS Custody for removal proceedings as a Material Witness in the case U.S. vs PALOS-Marquez, Ricardo.

MATERIAL WITNESS STATEMENT:

Name: DIEGO-Benabe, Francisco
Location: Brown Field Border Patrol Station, San Diego, California.
Time/Date: 12:35 AM, February 08, 2008
Taken By: Border Patrol Agent Ellioth Gallina
Witnessed By: Border Patrol Agent Patrol Cesar Martinez

On February 08, 2008, at approximately 12:35 AM, at the Brown Field Border Patrol Station in San Diego, California, DIEGO-Benabe, Francisco, provided a videotaped sworn statement in the Spanish Language, which in summary depicts the following:

DIEGO stated that he is not under the influence of any drugs or alcohol. DIEGO was notified of his right to speak with a consular officer of his country of origin, Mexico. DIEGO stated that he is a citizen and national of Mexico. DIEGO was born in Chiapas, Mexico on [redacted] DIEGO admitted to crossing into the United States illegally with three other individuals. DIEGO said that on Thursday February 07, 2008, he crossed the United States/Mexico International Border east of the Otay Mesa, California Port-of-Entry with three other individuals. DIEGO claimed that the group walked through the mountains until reaching their final resting point near the side of a road. DIEGO said his friends made arrangements for him to be smuggled into the United States and pay the guy $1,500. He was following a guide but the guide left them in the mountains. DIEGO states his planned destination was Los Angeles, California. DIEGO said he knew it was illegal to cross.

DIEGO stated the group attempted to flag someone down for approximately an hour. He

Signature	Title
RAY PADRON	BORDER PATROL AGENT

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further stated that PALOS-Marquez, Ricardo, the driver of the vehicle stopped and agreed to take them further into the city. DIEGO stated he had never met the driver before, but he knew the driver was arrested with the group. DIEGO stated that he entered through the passenger side of the truck and immediately lay down on the floor of the front seat. He stated that he did not know where the driver was going, but the driver said that it would only take fifteen minutes to get there.

DIEGO was asked if he wanted to add any other statements and he declined. The interview ended at approximately 12:59 AM on February 8, 2008. DIEGO is in DHS custody for removal passenger side of the truck and immediately lay down on the floor of the front seat. He stated that he did not know where the driver was going and that it would only take fifteen minutes to get there.

DIEGO was asked if he wanted to add any other statements and he declined. The interview ended at approximately 12:59 AM on February 8, 2008.

On February 8, 2008, at approximately 11:55 p.m DIEGO was shown a lineup of six individuals' photographs. DIEGO was able to correctly identify PALOS as the driver of the smuggling load.

DIEGO is in DHS custody for removal proceedings as a material witness in the case US vs. PALOS-Marquez, Ricardo.

ADDENDUM BY MYLES R. STAUNTON

On February 7, 2008, I, Border Patrol Agent Myles R. Staunton, was assigned line watch duties in the Dulzura area. I was driving eastbound on Otay Lakes Road to my area of responsibility when I came upon a very sharp right corner with zero visibility of on-coming traffic approximately 250 yards east of the area known as the "Riding-Hiking Gate". As soon as I was able to see the oncoming traffic, I came upon a green Dodge Ram pick-up truck driving westbound in the eastbound lane passing an on-duty UPS carrier van. At that moment I had to quickly apply my brakes and veer to the right in order to avoid a head-on collision with the green Dodge Ram. A few seconds after I was able to avoid a collision with the green Dodge Ram, I noticed the driver of the UPS carrier van gesturing towards the green Dodge Ram as he passed my position. Based on my knowledge of this area and the fact that the driver of the UPS carrier van was attempting to flag me down, I suspected that the green Dodge Ram was involved in some type of illegal activity.

I then notified Border Patrol Agent Salem Simon and Border Patrol Agent Cesar Martinez via service radio and advised them that I suspected the Dodge Ram was involved in some type of illegal activity. They advised me that the driver of the UPS carrier van had stopped at their position and advised them that he witnessed the green Dodge Ram pick up four illegal aliens from the side of the road. I then advised any units in the area, via service radio, of the description and direction of travel of the alien smuggling vehicle.

I made a u-turn and proceeded west on Otay Lakes Road in order to assist any units in the

Signature	Title
RAY PADRON	BORDER PATROL AGENT

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area with a vehicle stop. Border Intelligence Center Agents advised they were at Lane and Otay Lakes Road and had visual contact with the Dodge Ram pick-up. I monitored the radio and proceeded to the area where Agent Ray Padron advised he was conducting a vehicle stop. When I arrived at the location of the vehicle stop I observed four suspected illegal aliens and the suspected load driver in custody.

ADDENDUM BY SALEM J. SIMON

On February 7, 2008 I, Border Patrol Agent Salem J. Simon was assigned to line watch duties in the vicinity of Jamul, California. Border Patrol Agent Cesar Martinez and I were parked at the riding and hiking gate on the south side of Otay Lakes Road. A call was put out on the service radio by Agent Myles R. Staunton that there was a green Dodge Ram that was driving erratically westbound on Otay Lakes Road. The vehicle matching the description then passed our position at a high rate of speed. Moments later a UPS vehicle that was following the truck pulled over and the driver told us that he witnessed several individuals get into a vehicle matching that description. We then attempted to follow the vehicle westbound on Otay Lakes Road and lost visual contact with the vehicle.

We called Border Patrol Agent Ray Padron and advised him of our position and direction of travel. Agent Ray Padron advised us that he had visual of the vehicle. I continued to monitor the vehicle radio traffic and travel direction of Agent Padron until Agent Padron advised San Diego Sector Dispatch that the vehicle had come to a complete stop on the north bound on ramp of I-125 off Otay Lakes Road.

Agent Padron walked over to the driver's side door and identified himself as a Border Patrol Agent and then asked the driver as to his citizenship. The driver, later identified as PALOS-Marquez, Ricardo stated that he is a legal permanent resident. Agent Padron then noticed four individuals lying down in the back seat of the cabin bay. Agent Padron immediately told the driver to exit the vehicle. Agent Padron then questioned each of the other individuals in the vehicle about their citizenship. Each of the subjects stated that they are citizens and nationals of Mexico who are illegally present in the United States. I turned the vehicle off and we proceeded to place all of the individuals under arrest.

ADDENDUM BY CESAR MARTINEZ

On February 7, 2008 I, Border Patrol Agent Cesar Martinez was assigned to line watch duties in the vicinity of Jamul, California, with Border Patrol Agent Salem J. Simon. We received a call on the service radio from Agent Myles R. Staunton that there was a green Dodge Ram that was driving erratically westbound on Otay Lakes Road. The vehicle matching the description then passed our position at a high rate of speed. Moments later a UPS vehicle pulled over and the driver told us that he witnessed several individuals get into a vehicle matching that description. We then attempted to follow the vehicle westbound on Otay Lakes Road and lost visual contact with the vehicle.

We called Border Patrol Agent Ray Padron and advised him of our position and direction of travel. Agent Ray Padron advised us that he had a visual of the vehicle. I continued to

Signature	Title
RAY PADRON	BORDER PATROL AGENT

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Alien's Name	File Number Case no: [redacted]	Date 02/07/2008

monitor the vehicle radio traffic and travel direction of Agent Padron until Agent Padron advised San Diego Sector Dispatch that the vehicle had come to a complete stop on the north bound on ramp of I-125 off Otay Lakes Road.

Agent Padron walked over to the driver's side door and identified himself as a Border Patrol Agent and then asked the driver as to his citizenship. The driver, later identified as PALOS-Marquez, Ricardo stated that he is a legal permanent resident. Agent Padron then noticed four individuals lying down in the back seat of the cabin bay. Agent Padron told the driver to exit the vehicle. Agent Padron then questioned each of the other individuals in the vehicle about their citizenship. Each of the subjects stated that they are citizens and nationals of Mexico who are illegally present in the United States. I turned the vehicle off and we proceeded to place all of the individuals under arrest.

The vehicle (CA 7R41895 and VIN 3B7HC13YXTG165748) was processed for seizure because it was used in a violation of 8 USC 1324 Alen Smuggling.

Signature RAY PADRON	Title BORDER PATROL AGENT

10 of 10 Pages

EXHIBIT C

ERICK L. GUZMAN
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Attorneys for Mr. Palos

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE JEFFREY T. MILLER)

UNITED STATES OF AMERICA, Plaintiff, v. RICARDO PALOS, Defendant.	)	CASE NO. 08CR0547-JM DECLARATION OF ERICK L. GUZMAN

I, ERICK L. GUZMAN, state as follows, under penalty of perjury:

1. I am the attorney for Mr. Palos in the above named case.

2. I was involved with plea negotiations with Assistant Untied States Attorney, Caroline Han.

3. On February 23, 2008, I spoke with Ms. Han regarding an alleged August, 2007 arrest of Mr. Palos.

4. I asked Mrs. Han if she was extending a new offer that would include the alleged August, 2007 incidents. She replied that she was making no such offer.

I swear that to the best of my knowledge and memory, the foregoing is true and correct this ____th day of March, 2008.

/s/ Erick Guzman
Erick L. Guzman
Declarant

EXHIBIT D

U.S. Department of Homeland Security

PRIOR

REPORT OF INVESTIGATION

Title	File Number	Date
Primary subject: VALDEZ, Gregory Javier	[redacted] Event No: [redacted]	04/18/2006
		Report Number 06 SDC/BRF 04 020

Special Agent: *(Name)* *(Signature)*	Office
THOMAS L. ENGELHORN BORDER PATROL AGENT	SDC/ECJ
Approved by: *(Name and Title)* *(Signature)*	**Office**
ROBERT A. SOTO SUPERVISORY BORDER PATROL AGENT	SDC/BRF

SYNOPSIS
ALIEN SMUGGLING CASE

PRINCIPAL ORGANIZATION

NAME Gregory Javier VALDEZ [redacted] D/POB [redacted]CALIFORNIA, UNITED STATES

ALIAS RACE W SEX M HT 70 WT 210 EYES BRO HAIR BLK

ADDRESS (US) [redacted] FOREIGN

IMM STAT U.S. Citizen SS[redacted]

PRINCIPAL

NAME Jesus CAMARILLO [redacted] D/POB CHULA VISTA,CALIFORNIA, UNITED STATES

ALIAS RACE W SEX M HT 71 WT 250 EYES BRO HAIR BLK

ADDRESS (US) [redacted] FOREIGN

IMM STAT U.S. Citizen [redacted]

didn't interview Palos

☒ Continued on attached continuation page

ALIENS

NUMBER IN LOAD 25 NATIONALITY 25 MEXICO INTENDED DEST Los Angeles, CA

CHARGE PER ALIEN Avg. $1,440.00 DATE/PLACE OF ENTRY 04/17/2006 Marron Valley

PLACE OF ARREST El Cajon, California

DATE OF ARREST 04/18/2006 0845 ARRESTING OFFICER SADDY JARAMILLO JR

VEHICLE(S) USED 1989 FORD F-250 WHI VINN: 1FTHF25G4KPB17061 LIC# CA/6U66339

1994 CHEVROLET SUBURBAN GRN VINN: 1GNGC26K2RJ368267 CA/3GYZ664

TOTAL NUMBER OF PRINCIPALS/ASSOCIATES 3 DEPORTABLE/INADMISSABLE 0 NON-DEPORTABLE 3

TOTAL NUMBER OF CONVEYANCES SEIZED 2 ESTIMATED TOTAL VALUE $8,945.00

RECRUITING PROCEDURES-TRAVEL TO BORDER AREA-TO WHOM PAYMENT MADE-STAGING AREAS-MANNER OF ENTRY DROP HOUSES-HOW CHECKPOINTS AVOIDED-ROUTE TO POINT OF ARREST-CONTACTS AT DESTINATION

U.S. Department of Homeland Security **Continuation Page for Form** G166F

Alien's Name	File Number [redacted] Event No: [redacted]	Date 04/18/2006

PRINCIPAL
NAME Ricardo Ivan PALOS-Marquez A[redacted] D/POB 06/17/1986 TIJUANA,BAJA CALIFORNIA, MEXICO
ALIAS RACE W SEX M HT 71 WT 185 EYES BRO HAIR BLK
ADDRESS [redacted] FOREIGN
IMM STAT Legal Permanent Resident [redacted]

SMUGGLED ALIEN
NAME Daniel LINAREZ-Baxin A# D/POB [redacted] MEXICO
ALIAS RACE SEX M HT WT EYES HAIR
ADDRESS (US) FOREIGN [redacted]
IMM STAT Inadmissable Alien SS# FIN[redacted]

SMUGGLED ALIEN
NAME Zeterino GARCIA-HERNANDEZ A# D/POB [redacted] MEXICO
ALIAS RACE SEX M HT WT EYES HAIR
ADDRESS (US) FOREIGN [redacted]
IMM STAT Inadmissable Alien SS# FI[redacted]

SMUGGLED ALIEN
NAME Antonio MORALES-Lopez A# D/POB [redacted] MEXICO
ALIAS RACE SEX M HT WT EYES HAIR
ADDRESS (US) FOREIGN [redacted]
IMM STAT Inadmissable Alien SS# FI[redacted]

SMUGGLED ALIEN
NAME Felipe BUSTAMANTE-PACHECO A# D/POB [redacted]
ALIAS RACE SEX M HT WT EYES HAIR
ADDRESS (US) FOREIGN [redacted]
IMM STAT Inadmissable Alien SS# FI[redacted]

...(CONTINUED ON NEXT PAGE)

Signature	Title
THOMAS L. ENGELHORN	BORDER PATROL AGENT

EXHIBIT E

ERICK L. GUZMAN
California State Bar No. 244391
FEDERAL DEFENDERS OF SAN DIEGO, INC.
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Attorneys for Mr. Palos

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE JEFFREY T. MILLER)

UNITED STATES OF AMERICA, Plaintiff, v. RICARDO PALOS, Defendant.	CASE NO. 08CR0547-JM DECLARATION OF RICARDO PALOS

I, RICARDO PALOS, state as follows, under penalty of perjury:

1. On August 7, 2007, I was arrested.
2. I was not swerving in and out of the lane.
3. I was driving normally, in compliance with all traffic laws.
4. The vehicle was not swaying from side to side.
5. I did not see a human head look out the rear window.
6. The agent activated their emergency lights.
7. I did not believe that I had the option of ignoring the agent and continuing to drive.
8. On February 7, 2008, I was arrested.
9. I was questioned by agents on August 7, 2007, and February 7, 2008.

10. On both occasions, I felt pressured to speak with the agents.

11. On both occasions, I did not believe that I had the option of refusing to speak with the agents.

11. On both occasions, I did not know that I could have ceased questioning at any time.

I swear that to the best of my knowledge and memory, the foregoing is true and correct this 1 th day of April, 2008.

Ricardo I Palos M.
RICARDO I. PALOS
Declarant

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
MANUEL MARTINEZ-COVARRUBIAS,
Defendant.

CASE NO. 07cr0491 BTM

ORDER DENYING DEFENDANT'S MOTION TO DISMISS THE INDICTMENT

Defendant Manuel Martinez-Covarrubias has filed a Motion to Dismiss the Indictment Due to Erroneous Grand Jury Instruction. For the reasons discussed below, Defendant's motion is **DENIED**.

I. BACKGROUND

On February 28, 2007, a federal grand jury empaneled in this district on January 11, 2007 returned a two-count Indictment charging Defendant with Importation of Methamphetamine, in violation of 21 U.S.C. §§ 952 and 960, and Possession of Methamphetamine with Intent to Distribute, in violation of 21 U.S.C. § 841(a)(1).

II. CHALLENGED INSTRUCTIONS

A. Video Presentation

Prior to the selection of the grand jury jury, the potential grand jurors were shown a video titled "The Federal Grand Jury: The People's Panel." The video's apparent purpose is to educate potential grand jurors about their civic duty to serve, the function of the grand jury, and their responsibilities as grand jurors.

The video presents the story of a woman who serves on a grand jury for the first time. In one scene, after the woman receives the summons, her son tells her what he has learned about the function of a grand jury. Reading from a civics book, the son states that if the "jury finds that probable cause does exist, then it will return a written statement of charges called an indictment . . . ."

When charging the impaneled grand jury, the fictional judge explains that if the grand jury finds that there is probable cause, "you will return an indictment."

Later, the foreperson tells the other grand jurors that there are two purposes of the grand jury: (1) when there is a finding of probable cause, to bring the accused to trial fairly and swiftly; and (2) to protect the innocent against unfounded prosecution.

B. Voir Dire Session

Before commencing voir dire, the empaneling judge, the Hon. Larry A. Burns, explained the function of the grand jury to the prospective jurors as follows: "The grand jury is determining really two factors: 'Do we have a reasonable – collectively, do we have a reasonable belief that a crime was committed? And second, do we have a reasonable belief that the person that they propose that we indict committed the crime?' If the answer is 'yes' to both of those, then the case should move forward. If the answer to either of the questions is 'no,' then the grand jury should hesitate and not indict." App. 2 to Gov't Response at 8.

During voir dire, Judge Burns explained to the potential grand jurors that the presentation of the evidence to the grand jury was going to be one-sided. Id. at 14. However, Judge Burns stated, "Now, having told you that, my experience is that the prosecutors don't play hide-the-ball. If there's something adverse or that cuts against the charge, you'll be informed of that. They have a duty to do that." Id. at 14-15.

One prospective juror, a retired clinical social worker, indicated that he did not believe that any drugs should be considered illegal. Id. at 16. He also stated that he had strong feelings about immigration cases and thought the government was spending a lot of time unnecessarily persecuting people. Id. The following exchange occurred:

> The Court: Now, the question is can you fairly evaluate those cases? Just as the Defendant ultimately is entitled to a fair trial and the person that's accused is entitled to a fair appraisal of the evidence of the case that's in front of you, so, too, is the United States entitled to a fair judgment. If there's probable cause, then the case should go forward. I wouldn't want you to say, "Well, yeah, there's probable cause. But I still don't like what our Government is doing. I disagree with these laws, so I"m not going to vote for it to go forward." If that's your frame of mind, then probably you shouldn't serve. Only you can tell me that.
>
> Prospective Juror: Well, I think I may fall in that category.
>
> The Court: In the latter category?
>
> Prospective Juror: Yes.
>
> The Court: Where it would be difficult for you to support a charge even if you thought the evidence warranted it?
>
> Prospective Juror: Yes.
>
> The Court: I'm going to excuse you, then. I appreciate your honest answers.

Id. at 16-17.

Later, another prospective juror, a real estate agent, expressed a concern regarding the disparity between state and federal law with respect to medical marijuana. Judge Burns responded:

> Well, those things – the consequences of your determination shouldn't concern you in the sense that penalties or punishment, things like that – we tell trial jurors, of course, that they cannot consider the punishment or the consequence that Congress has set for these things. We'd ask you to also abide by that. We want you to make a business-like decision and look at the facts and make a determination of whether there was a [sic] probable cause.

Id. at 25.

Subsequently, the prospective juror stated that he felt that drugs should be legal and that rapists and murderers, not people using drugs, should go to jail. Id. at 25-26. The following exchange ensued:

> The Court: I think rapists and murderers ought to go to jail too. It's not for me as a judge to say what the law is. We elect legislators to do that. We're sort of at the end of the pipe on that. We're charged with enforcing the laws that Congress gives us.
>
> I can tell you sometimes I don't agree with some of the legal decisions that are indicated that I have to make. But my alternative is to vote for someone different, vote for someone that supports the policies I support and get the law changed. It's not for me to say, "Well, I don't like it. So I'm not going to follow it here."
>
> You'd have a similar obligation as a grand juror even though you might

> have to grit your teeth on some cases. Philosophically, if you were a member of congress, you'd vote against, for example, criminalizing marijuana. I don't know if that's it but you'd vote against criminalizing some drugs.
>
> That's not what your prerogative is here. Your prerogative instead is to act like a judge and to say, "All right. This is what I've got to deal with objectively. Does it seem to me that a crime was committed? Yes. Does it seem to me that this person's involved? It does." And then your obligation, if you find those things to be true, would be to vote in favor of the case going forward.
>
> I can understand if you tell me, "Look, I get all that, but I just can't do it or I wouldn't do it." I don't know what your frame of mind is. You have to tell me about that.
>
> Prospective Juror: I'm not comfortable with it.
>
> The Court: Do you think you'd be inclined to let people go on drug cases even though you were convinced there was probable cause they committed a drug offense?
>
> Prospective Juror: It would depend upon the case.
>
> The Court: Is there a chance that you would do that?
>
> Prospective Juror: Yes.
>
> The Court: I appreciate your answers. I'll excuse you at this time.

Id. at 26-28.

Later, a potential juror said that he was "soft" on immigration because he had done volunteer work with immigrants in the field, but that he could be fair and objective. Judge Burns stated: "As you heard me explain earlier to one of the prospective grand jurors, we're not about trying to change people's philosophies and attitudes here. That's not my business. But what I have to insist on is that you follow the law that's given to us by the United States Congress. We enforce the federal laws here." Id. at 61. This juror was not excused.

C. Charge to Impaneled Grand Jury

After the grand jury was impaneled, Judge Burns gave further instructions regarding the responsibilities of the grand jurors.

With respect to the enforcement of federal laws, Judge Burns explained:

> But it's not for you to judge the wisdom of the criminal laws enacted by Congress; that is, whether or not there should be a federal law or should not be a federal law designating certain activity is [sic] criminal is not up to you. That's a judgment that Congress makes.
>
> And if you disagree with that judgment made by Congress, then your

> option is not to say, 'Well, I'm going to vote against indicting even though I think that the evidence is sufficient' or 'I'm going to vote in favor of [indictment] even though the evidence may be insufficient.' Instead, your obligation is to contact your congressman or advocate for a change in the laws, but not to bring your personal definition of what the law ought to be and try to impose that through applying it in a grand jury setting.
>
> Furthermore, when you're deciding whether to indict or not to indict, you shouldn't be concerned with punishment that attaches to the charge. I think I also alluded to this in the conversation with one gentleman. Judges alone determine punishment. We tell trial juries in criminal cases that they're not to be concerned with the matter of punishment either. Your obligation at the end of the day is to make a business-like decision on facts and apply those facts to the law as it's explained and read to you.

App. 1 to Gov't Response at 8-9.

With respect to exculpatory evidence, Judge Burns stated: "As I told you, in most instances, the U.S. Attorneys are duty-bound to present evidence that cuts against what they may be asking you to do if they're aware of that evidence." Id. at 20. Later, Judge Burns said, "If past experience is any indication of what to expect in the future, then you can expect that the U.S. Attorneys that will appear in front of you will be candid, they'll be honest, that they'll act in good faith in all matters presented to you." Id. at 27.

III. DISCUSSION

A. Instructions Re: Role of Grand Jury

Defendant contends that statements made in the video, Judge Burns' instructions, and the dismissal of two potential jurors deprived Defendant of the traditional functioning of the Grand Jury. Specifically, Defendant claims that the challenged statements in combination with the dismissal of the two potential jurors "flatly prohibited grand jurors from exercising their constitutional discretion to not indict even if probable cause supports the charge." (Def.'s Reply Br. 8.) Looking at the video presentation and the instructions as a whole, the Court disagrees.

Judge Burns made it clear that the jurors were not to refuse to indict in the face of probable cause *on the ground that they disagreed with Congress's decision to criminalize certain activity*. Judge Burns did not err in doing so. In United States v. Navarro-Vargas, 408

F.3d 1184 (9th Cir. 2005) ("Navarro-Vargas II"), the Ninth Circuit upheld the model grand jury instruction that states: "You cannot judge the wisdom of the criminal laws enacted by Congress, that is, whether or not there should or should not be a federal law designating certain activity as criminal. That is to be determined by Congress and not by you." The majority opinion observed that the instruction was not contrary to any long-standing historical practice surrounding the grand jury and noted that shortly after the adoption of the Bill of Rights, federal judges charged grand juries with a duty to submit to the law and to strictly enforce it. Id. at 1193,1202-03. "We cannot say that the grand jury's power to judge the wisdom of the laws is so firmly established that the district court must either instruct the jury on its power to nullify the laws or remain silent." Id. at 1204.

A prohibition against judging the wisdom of the criminal laws enacted by Congress amounts to the same thing as a prohibition against refusing to indict based on disagreement with the laws. It is true that Judge Burns used stronger language that, viewed in isolation, could be misconstrued as requiring the return of an indictment in *all* cases where probable cause can be found. Particularly troubling is the following statement made to the real estate agent: "Your prerogative instead is to act like a judge and to say, 'All right. This is what I've got to deal with objectively. Does it seem to me that a crime was committed? Yes. Does it seem to me that this person's involved? It does.' *And then your obligation*, if you find those things to be true, *would be to vote in favor of the case going forward.*" App. 2 to Gov't Response at 26. However, viewed in context, Judge Burns was not mandating the issuance of an indictment in *all* cases where probable cause is found; he was explaining that disagreement with the laws should not be an obstacle to the issuance of an indictment.[1]

Furthermore, the word "obligation" is not materially different than the word "should."

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[1] The Supreme Court has recognized that a grand jury is not required to indict in every case where probable cause exists. In Vasquez v. Hillery, 474 U.S. 254, 263 (1986), the Supreme Court explained: "The grand jury does not determine only that probable cause exists to believe that a defendant committed a crime, or that it does not. In the hands of the grand jury lies the power to charge a greater offense or a lesser offense; numerous counts or a single count; and perhaps most significant of all, a capital offense or a noncapital offense - all on the basis of the same facts. Moreover, '[t]he grand jury is not bound to indict in every case where a conviction can be obtained.' United States v. Ciambrone, 601 F.2d 616, 629 (2d Cir. 1979) (Friendly, J., dissenting)."

In Navarro-Vargas II, the majority opinion held that the model instruction that the jurors "should" indict if they find probable cause does not violate the grand jury's independence. The majority explained, "As a matter of pure semantics, it does not 'eliminate discretion on the part of the grand jurors,' leaving room for the grand jury to dismiss even if it finds probable cause." Navarro-Vargas II, 408 F.3d at 1205 (quoting United States v. Marcucci, 299 F.3d 1156, 1159 (9th Cir. 2002)). The dissenting opinion notes that the word "should" is used "to express a duty [or] *obligation*." Id. at 1121 (quoting The Oxford American Diction And Language Guide 931 (1999))(emphasis added).[2]

Defendant points to the language in the video where first the son, then the judge, state that if there is a finding of probable cause, the grand jury "will" return an indictment. However, no emphasis is placed on the word "will." As spoken by the actors, the statements are not directives, mandating the return of an indictment upon the finding of probable cause, but, rather, descriptions of what is expected to occur. Similarly, the foreperson's statement that one of the purposes of the grand jury is to bring an accused to trial when there is a finding of probable cause is a general statement of the grand jury's function, not a command to return an indictment in *every* case where probable cause exists.

Defendant also argues that Judge Burns improperly forbade the grand jury from considering the potential punishment for crimes when deciding whether or not to indict. Defendant relies on the following statement:

> Well, those things – the consequences of your determination shouldn't concern you in the sense that penalties or punishment, things like that – we tell trial jurors, of course, that they cannot consider the punishment or the consequence that Congress has set for these things. *We'd ask you to also abide by that.* We want you to make a business-like decision and look at the facts and make a determination of whether there was a probable cause.

App. 2 to Gov't Response at 25. (Emphasis added.) Although Judge Burns stated that trial jurors *cannot* consider punishment, he did not impose such a restriction on the grand jurors. Instead, Judge Burns *requested* that the grand jurors follow the same principle. Similarly, during the formal charge, Judge Burns stated, "[y]ou *shouldn't* be concerned with punishment that attaches to the charge." App. 1 to Gov't Response at 8. (Emphasis added.)

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[2] Defendant concedes that at other times Judge Burns instructed that upon a finding of probable cause, the case "should" go forward. App. 2 to Gov't Response at 8, 17; App. 1 to Gov't Response at 4, 23.

In United States v. Cortez-Rivera, 454 F.3d 1038 (9th Cir. 2006), the Ninth Circuit upheld a jury instruction that stated: "[W]hen deciding whether or not to indict, you *should not* be concerned about punishment in the event of conviction; judges alone determine punishment." (Emphasis added.) Consistent with the reasoning in Marcucci and Navarro-Vargas II, the Ninth Circuit held that the instruction did not place an absolute bar on considering punishment and was therefore constitutional. The instructions given by Judge Burns regarding the consideration of punishment were substantially the same as the instruction in Cortez-Rivera.

Neither Judge Burns nor the video pronounced a general prohibition against jurors exercising their discretion to refuse to return an indictment in the face of probable cause. In any case, "history demonstrates that grand juries do not derive their independence from a judge's instruction. Instead they derive their independence from an unreviewable power to decide whether to indict or not." Navarro-Vargas II, 408 F.3d at 1204.

Both the video and Judge Burns informed the jurors about the utmost secrecy of the grand jury proceedings and their deliberations. The video and Judge Burns also emphasized to the jury that they were independent of the Government and did not have to return an indictment just because the Assistant U.S. Attorney asked them to. In the video, the judge expressed approval at the fact that the grand jury did not return an indictment as to the alleged driver of the get-away car. Judge Burns characterized the jury as "a buffer between our Government's ability to accuse someone of a crime and then putting that person through the burden of standing trial." App. 1 to Gov't Response at 26. Judge Burns also told the jurors that they were not to be a "rubber stamp" and were expected to depend on their independent judgment. Id. at 27.

Even though the jurors were not explicitly instructed that they could use their discretion to refuse to return an indictment, they retained that power by virtue of the secrecy surrounding their deliberations and the unreviewability of their decisions. Nothing that Judge

Burns said or did impinged on the jurors' independence in this regard.

Defendant counters that the dismissal of the two potential jurors undermined the grand jury's independence from the very start. According to Defendant, when Judge Burns dismissed the jurors, the message was clear that they were to indict in every case where there was probable cause or they would be excused. Defendant contends that the remaining grand jurors could not have understood Judge Burns' actions in any other way. (Reply Br. 18.) The Court disagrees.

Upon reading the voir dire transcript, it is apparent that the jurors were excused because they were biased against the government with respect to a whole category of criminal laws, not simply because they were independent-minded and might refuse to return an indictment in a case where probable cause exists. Judge Burns explained to the clinical social worker, "We're all products of our experience. We're not going to try to disabuse you of experiences or judgments that you have. What we ask is that you not allow those to control invariably the outcome of the cases coming in front of you; that you look at the cases fresh, you evaluate the circumstances, listen to the witness testimony, and then make an independent judgment." App. 2 to Gov't Response at 15. Judge Burns excused the social worker after he admitted that it would be difficult for him to return an indictment in drug or immigration cases.

Similarly, the real estate agent expressed that he thought drugs should be legal and that people using drugs should not be sent to jail. App. 2 to Gov't Response at 25-26. The real estate agent said that he was not comfortable with indicting in drug cases. Although he did not say that he would refuse to indict in all cases involving drugs, he admitted that because of his beliefs, there was a chance that he would refuse to return an indictment in a drug case even though there was probable cause. Id. at 27. The real estate agent's responses established that he had serious concerns regarding the criminalization of drugs and could not be impartial with respect to these cases

That bias was the reason for the dismissal of the first two potential jurors is confirmed by the dismissal of a third potential juror. This juror stated that he had a strong bias for the

Government. App. 2 to Gov't Response at 38. Judge Burns cautioned the juror that he should not "automatically defer to [the Government] or surrender the function and give the indictment decision to the U.S. Attorney. You have to make that independently." Id. at 40. Judge Burns emphasized once again the responsibility of the jurors to evaluate the facts of each case independently based on the evidence presented. Id. at 42-43. Demonstrating his even-handedness, Judge Burns explained, "I'm equally concerned with somebody who would say, 'I'm going to automatically drop the trap door on anybody the U.S. Attorney asks.' I wouldn't want you to do that." Id. at 44.

A reasonable grand juror would not have interpreted the dismissal of the first two potential jurors as a message that they must indict in all cases where probable cause is found or risk being excused from service. It was apparent to the other jurors that a lack of impartiality with respect to certain types of cases, *not* independence, was the reason for all three dismissals.

In sum, Judge Burns did not err in instructing the grand jurors that they were not to refuse to return an indictment on the ground that they disagreed with the laws. Furthermore, nothing in the video or Judge Burns' instructions nullified the grand jury's inherent power to refuse to indict for any reason whatsoever. As the Ninth Circuit noted in Navarro-Vargas II, 408 F.3d at 1204, the grand jury's independence results from the secrecy of their deliberations and the unreviewability of their decisions. Nothing in the record shows any impediment to that independence.

B. Instructions re: Assistant U.S. Attorneys

Defendant also contends that Judge Burns committed structural error by making comments about the Assistant U.S. Attorney's duty to present evidence that "cuts against the charge." According to Defendant, not only did Judge Burns' comments contradict United States v. Williams, 504 U.S. 36 (1992), but also discouraged independent investigation, leading to inaccurate probable cause determinations. Defendant reasons that given Judge Burns' comments, the grand jurors would have assumed that if the prosecutor did not present any exculpatory evidence, then none exists, rendering further investigation a waste of time.

Under Williams, prosecutors do not have a duty to present substantial exculpatory evidence to the grand jury. Although Assistant U.S. Attorneys apparently have an employment duty to disclose "substantial evidence that directly negates the guilt" of a subject of investigation (United States Attorneys' Manual § 9-11.233), it does not appear that they have a broad duty to disclose all evidence that may be deemed exculpatory or adverse to the Government's position.

Accordingly, Judge Burns' comments regarding the duty of Assistant U.S. Attorneys to present adverse evidence were inaccurate. However, Judge Burns' comments do not rise to the level of structural error. As discussed above, the video and Judge Burns stressed that the grand jury was independent of the Government. The video and Judge Burns also explained to the jury that they could direct the Assistant U.S. Attorney to subpoena additional documents or witnesses. App. 1 to Gov't Response at 11, 24. The jurors were also told about their right to pursue their own investigation, even if the Assistant U.S. Attorney disagrees with the grand jury's decision to pursue the subject. Id. at 12.

In light of the foregoing instructions, the Court does not agree that the grand jurors would assume that if the Government did not present any exculpatory evidence, none exists. A reasonable juror would understand that the Assistant U.S. Attorney may not be aware of certain exculpatory evidence, whether due to legitimate circumstances or inadequate investigation, and that further investigation by the grand jury may be needed to properly evaluate the evidence before them. Furthermore, Judge Burns told the jury that "in *most* instances" the U.S. Attorneys are duty-bound to present exculpatory evidence. App. 1 to Gov't Response at 20. Based on this qualifying language, the grand jurors would have understood that the prosecutor is not always bound to present exculpatory evidence. Thus, "the structural protections of the grand jury" have not "been so compromised as to render the proceedings fundamentally unfair." Bank of Nova Scotia v. United States, 487 U.S. 250, 257 (1988).

If Defendant can establish that the Government in fact knew of exculpatory evidence that was not presented to the grand jury and that this failure to present exculpatory evidence, in conjunction with Judge Burns' comments, "substantially influenced the grand jury's decision to indict" or raises "grave doubt" that the decision to indict was free from the substantial influence of such events, the Court may dismiss the indictment under its supervisory powers. Bank of Nova Scotia, 487 U.S. at 256. Therefore, the Court will grant Defendant leave to conduct discovery regarding what evidence was presented to the grand jury. If, based upon the discovery, Defendant can establish that he suffered actual prejudice, Defendant may renew his motion to dismiss the indictment.

IV. CONCLUSION

For the reasons discussed above, Defendant's Motion to Dismiss the Indictment Due to Erroneous Grand Jury Instruction is **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

DATED: October 11, 2007

Honorable Barry Ted Moskowitz
United States District Judge

EXHIBIT G

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE: THE IMPANELMENT OF GRAND JURY PANELS 07-1 AND 07-2)

BEFORE THE HONORABLE LARRY ALAN BURNS

UNITED STATES DISTRICT JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, JANUARY 11, 2007

COURT REPORTER:

EVA OEMICK
OFFICIAL COURT REPORTER
UNITED STATES COURTHOUSE
940 FRONT STREET, STE. 2190
SAN DIEGO, CA 92101
TEL: (619) 615-3103

SAN DIEGO, CALIFORNIA-WEDNESDAY, JANUARY 11, 2007-10:45 A.M.

MR. HAMRICK: YOU AND EACH OF YOU DO SOLEMNLY SWEAR OR AFFIRM THAT YOU WILL GIVE TRUE ANSWERS TO ALL QUESTIONS THAT WILL BE PUT TO YOU TOUCHING ON YOUR QUALIFICATION TO SERVE AS A GRAND JUROR DURING THIS SESSION OF COURT, SO HELP YOU?

(ALL GRAND JURORS RESPOND AFFIRMATIVELY)

MR. HAMRICK: THANK YOU. PLEASE BE SEATED AND COME TO ORDER.

THE COURT: LADIES AND GENTLEMEN, GOOD MORNING AND WELCOME TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA. YOU'RE HERE TODAY IN CONNECTION WITH OUR EFFORT TO IMPANEL GRAND JURIES. I KNOW ALL OF YOU HAVE SEEN THE FILM ABOUT THE FUNCTION OF THE GRAND JURY. I'M GOING TO TALK A LITTLE BIT MORE ABOUT THAT LATER IN MY REMARKS AND MY INTERACTIONS WITH YOU TODAY.

WE'RE ESSENTIALLY LOOKING FOR PEOPLE WHO CAN FAIRLY AND CONSCIENTIOUSLY EVALUATE A SET OF FACTS AND MAKE AN IMPORTANT DECISION ABOUT WHETHER CASES SHOULD MOVE FORWARD TO TRIAL. THAT'S THE FUNCTION OF THE GRAND JURY. YOU'RE TO WEED OUT THE GROUNDLESS CHARGES FROM THOSE THAT HAVE MERIT, ALTHOUGH ACKNOWLEDGING THAT YOU'RE NOT MAKING A FINAL DECISION ON WHETHER A PERSON IS GUILTY OR NOT OF A CRIMINAL CHARGE. BUT THE IDEA OF PUTTING A PERSON THROUGH A TRIAL OF ITSELF IS A SIGNIFICANT RESPONSIBILITY, AND THAT'S THE RESPONSIBILITY

THAT WE CALL ON YOU TO FULFILL.

MY NAME IS LARRY BURNS. I'M THE JURY JUDGE. I'LL TELL YOU A LITTLE BIT ABOUT OUR COURT.

WE HAVE 12 ACTIVE JUDGES HERE NOW AND FIVE SENIOR JUDGES. WHEN A FEDERAL JUDGE TURNS 65 AND ASSUMING THEIR AGE AND THEIR YEARS OF SERVICE ADD UP TO 80, THEY CAN GO SENIOR AND WORK A REDUCED CASELOAD. BUT OUR SENIORS IN OUR VERY BUSY DISTRICT WORK VERY, VERY HARD.

EACH OF US, EACH OF OUR JUDGES HERE, WAS APPOINTED BY ONE OF THE PRESIDENTS OF THE UNITED STATES AND CONFIRMED BY THE SENATE. WE HAVE A VERY BUSY, ACTIVE DISTRICT HERE. OUR PROXIMITY TO THE BORDER GIVES US LOTS OF CASES. I THINK IF YOU SERVE ON THE GRAND JURY OR IF YOU'VE BEEN HERE BEFORE SERVING AS A TRIAL JUROR, YOU'RE AWARE THAT PEOPLE TRY TO BRING THE STRANGEST THINGS ACROSS THE BORDER, A LOT OF WHICH ARE PROHIBITED; PEOPLE, DRUGS, PARROTS, KNOCK-OFF CALVIN KLEIN JEANS. ALL THOSE THINGS ARE NOW IMPLICATED BY THE FEDERAL LAWS.

LET ME INTRODUCE THE CLERK OF OUR COURT, MR. HAMRICK. HE'S THE THAT CALLED COURT TO ORDER.

WE ALSO HAVE SOME REPRESENTATIVES HERE FROM THE UNITED STATES ATTORNEY'S OFFICE. THEY WORK VERY CLOSELY WITH THE GRAND JURY. THEY'RE THE ONES THAT DECIDE, IN THE FIRST INSTANCE, WHETHER A CASE SHOULD BE BROUGHT. IT'S SUBJECT TO THE APPROVAL OF THE GRAND JURY THAT THE CASE CAN GO FORWARD.

IF YOU'RE CHOSEN AS A GRAND JUROR, YOU'RE GOING TO BE HEARING, BY AND LARGE, CASES PRESENTED BY THE ASSISTANT UNITED STATES ATTORNEYS WHO WORK IN OUR DISTRICT.

REPRESENTING THAT OFFICE IS MR. TODD ROBINSON. HE'S A VERY FINE LAWYER. I'VE KNOWN HIM FOR YEARS. HE'S A FINE TRIAL LAWYER, VERY SMART FELLOW.

AND [redacted] WHO'S BEEN WITH THE U.S. ATTORNEY'S OFFICE FOR SOME TIME, ALSO, SHE'S THE GRAND JURY ASSISTANT. YOU'LL BE GETTING TO KNOW HER IN WORKING WITH HER.

AND THEN WHOSE [redacted] OUR JURY ADMINISTRATOR.

AND THEN FINALLY I THINK MOST OF YOU HAVE MET [redacted] SHE'S OUR JURY CLERK.

AND THEN THIS YOUNG WOMAN HERE, EVA OEMICK, SHE'S MY COURT REPORTER. YOU'LL SEE HER OCCASIONALLY WHEN YOU COME DOWN TO RETURN GRAND JURY INDICTMENTS. AFTER YOU DECIDE WHICH CASES SHOULD GO FORWARD, USUALLY THE FOREPERSON OR THE DEPUTY FOREPERSON WILL COME DOWN. SOMETIMES TO MY COURT; SOMETIMES TO OTHERS. BUT THAT'S A REPORTED PROCEEDING.

SO WE'RE GLAD TO HAVE YOU HERE TODAY. THIS IS IMPORTANT SERVICE, AND WE APPRECIATE YOU BEING HERE. THE MOST FAMILIAR RESPONSE I GET FROM FOLKS CALLED IN FOR JURY SERVICE OR GRAND JURY SERVICE IS "I WISH I WAS SOMEWHERE ELSE."

AND I UNDERSTAND THE SENTIMENT. WE ALL LEAD VERY BUSY LIVES. THIS IS REALLY IMPORTANT SERVICE. IT'S LIKE

TRIAL JURY SERVICE. I TELL OUR TRIAL JURORS THAT IF YOU WERE IN THE POSITION OF A DEFENDANT IN A CASE OR A PLAINTIFF IN A CIVIL CASE OR EVEN THE UNITED STATES GOVERNMENT, MR. ROBINSON'S POSITION, YOU'D WANT THE CASE TO BE DECIDED BY PEOPLE WHO HAVE A STAKE IN THE COMMUNITY, PEOPLE WHO ARE FAIR-MINDED, PEOPLE WHO ARE CONSCIENTIOUS. THAT'S WHAT OUR JURY SYSTEM IS ABOUT. OUR GRAND JURY SYSTEM DEPENDS ON THAT AS WELL. WE WANT FAIR-MINDED PEOPLE TO MAKE THESE VERY IMPORTANT DECISIONS.

SO WHILE I ACKNOWLEDGE AND I UNDERSTAND THAT YOU LEAD VERY BUSY LIVES, WE APPRECIATE THE COMMITMENT THAT YOU MAKE. OUR SYSTEM DEPENDS ON IT. AT SOME POINT, IF YOU COUNT ON THE SYSTEM TO GIVE YOU JUSTICE, THEN YOU MUST BE PREPARED TO MAKE THIS KIND OF COMMITMENT WHEN CALLED UPON TO DO IT. SO AGAIN, I APPRECIATE YOU BEING HERE.

THAT SAID, WE'VE TRIED TO SCREEN THOSE PEOPLE PREVIOUSLY WHO, IN THEIR QUESTIONNAIRES, TOLD US THAT THEY HAD INSURMOUNTABLE PROBLEMS THAT WOULD PREVENT THEM FROM SERVING. MY EXPERIENCE IS THAT BETWEEN THE TIME WE GET THE QUESTIONNAIRES AND THE SESSION TODAY, THE SESSION WHERE WE ACTUALLY SPEAK TO PEOPLE PERSONALLY, THAT SOMETIMES THERE'S SOME ADDITIONAL PROBLEMS THAT ARISE THAT WEREN'T FORESEEN AND WEREN'T KNOWN AT THE TIME ALL OF YOU FILLED OUT THE QUESTIONNAIRES.

MADAM CLERK, IF YOU'LL CALL THE FIRST 23 NAMES.

THE CLERK: THIS IS THE PANEL 07-1, THE WEDNESDAY PANEL.

[redacted]

THE NEXT NAME HAS BEEN EXCUSED. I'LL DRAW A NEW NAME.

NO. [redacted]

THE NEXT NAME HAS BEEN EXCUSED. I'LL DRAW ANOTHER NAME RANDOMLY.

NO. [redacted]

[redacted]

THE COURT: GOOD MORNING AGAIN.

[redacted] YOU HAVE A COPY OF THE QUESTIONNAIRE WITH THE BASIC BIOGRAPHICAL INFORMATION.

WOULD YOU TELL US ABOUT YOURSELF, PLEASE.

PROSPECTIVE JUROR: MY MAKE [redacted] I LIVE IN [redacted] I'M A TEACHER. MY WIFE IS A [redacted] I HAVE ONE ADULT CHILD. HE'S [redacted] I HAD SOME EXPERIENCE IN THE STATE COURT. I WAS IN A TRIAL IN NOVEMBER OR OCTOBER. YES, I CAN BE FAIR AND IMPARTIAL.

THE COURT: WHERE DO YOU TEACH?

PROSPECTIVE JUROR: [redacted] SCHOOL DISTRICT.

THE COURT: WHAT IS YOUR DISCIPLINE?

PROSPECTIVE JUROR: LANGUAGE, ARTS, SOCIAL STUDIES.

THE COURT: I HAVE TWO SONS WHO [redacted] I DON'T LIVE IN [redacted] ANYMORE. I LIVED THERE 24 YEARS. AND AS SOON AS THE YOUNGEST ONE GRADUATED, TWO WEEKS LATER I MOVED CLOSER TO DOWNTOWN BECAUSE THE DRIVE [redacted] WAS KILLING ME.

HOW LONG HAVE YOU BEEN A TEACHER?

PROSPECTIVE JUROR: I STARTED AT [redacted] AND

I'VE BEEN AT [redacted] FOR 15 YEARS.

THE COURT: NICE TO HAVE YOU.

THERE'S A DIFFERENCE, OF COURSE, BETWEEN THE FUNCTION OF THE GRAND JURY AND THE FUNCTION OF THE TRIAL JURY. HERE THE STANDARD OF PROOF IS NOT PROOF BEYOND A REASONABLE DOUBT BECAUSE THE GRAND JURY IS NOT MAKING AN ULTIMATE DECISION ABOUT WHETHER SOMEONE IS GUILTY OR NOT OF THE CHARGE. INSTEAD, THE GRAND JURY IS DETERMINING REALLY TWO FACTORS: "DO WE HAVE A REASONABLE -- COLLECTIVELY, DO WE HAVE A REASONABLE BELIEF THAT A CRIME WAS COMMITTED? AND SECOND, DO WE HAVE A REASONABLE BELIEF THAT THE PERSON THAT THEY PROPOSE THAT WE INDICT COMMITTED THE CRIME?"

IF THE ANSWER IS "YES" TO BOTH OF THOSE, THEN THE CASE SHOULD MOVER FORWARD. IF THE ANSWER TO EITHER OF THE QUESTIONS IS "NO," THEN THE GRAND JURY SHOULD HESITATE AND NOT INDICT.

YOU UNDERSTAND THAT LEGAL DIFFERENCE BETWEEN GRAND JURY FUNCTION AND TRIAL JURY FUNCTION?

PROSPECTIVE JUROR: YES, I DO.

THE COURT: THANK YOU, [redacted] I APPRECIATE YOUR ANSWERS.

[redacted] TELL US ABOUT YOURSELF.

PROSPECTIVE JUROR: MY NAME IS [redacted]. I LIVE IN [redacted] I'M A MANAGER OF IMPLEMENTATIONS FOR A SOFTWARE COMPANY. I'M NOT MARRIED. I HAVE NO CHILDREN. I'VE

SERVED AS A FEDERAL GRAND JUROR IN '99, I BELIEVE.

THE COURT: HERE IN THIS DISTRICT?

PROSPECTIVE JUROR: YES.

THE COURT: YOU'RE A VETERAN. YOU KNOW ALL ABOUT THIS PROCESS.

PROSPECTIVE JUROR: CORRECT.

YES, I CAN FAIR.

THE COURT: ARE YOU UP TO THE TASK?

PROSPECTIVE JUROR: YES.

THE COURT: I THINK IT MIGHT BE INTERESTING TO THE OTHER ASSEMBLED PEOPLE WHO HAVE NOT BEEN ON A GRAND JURY BEFORE, DID YOU ENJOY YOUR PRIOR SERVICE?

PROSPECTIVE JUROR: I DID.

THE COURT: INTERESTING? LEARNED A LOT OF THINGS?

PROSPECTIVE JUROR: YES.

THE COURT: MOST PEOPLE WHO'VE SERVED ON THE GRAND JURY TELL ME IT'S ONE OF THE BEST LEARNING EXPERIENCES OF THEIR LIFE. THEY MEET INTERESTING PEOPLE. THEY DEAL WITH INTERESTING ISSUES.

THANK YOU. I APPRECIATE YOUR ANSWERS. WELCOME BACK.

[redacted]

PROSPECTIVE JUROR: [redacted]. I LIVE IN [redacted] I'M A REGISTERED NURSE. I'M MARRIED, AND MY HUSBAND IS A [redacted] I HAVE [redacted] ADULT CHILD

WHO'S IN HIS [redacted] I HAVE EXPERIENCE AS A TRIAL JUROR IN MY MID-20'S. I COULD BE FAIR IF SELECTED FOR A GRAND JURY.

THE COURT: YOU WERE IN YOUR MID-20'S OR YOU'VE HEARD 25 CASES?

PROSPECTIVE JUROR: I WAS IN MY MID-20'S. A LONG TIME AGO.

THE COURT: I ASKED [redacted] ABOUT THE DIFFERENCE. ALL OF YOU, OF COURSE, HAVE SEEN THE ORIENTATION TAPE ABOUT THE FUNCTION OF THE GRAND JURY.

YOU APPRECIATE THE DIFFERENCE IN THE FUNCTION BETWEEN THE TWO ENTITIES, TRIAL JURIES AND GRAND JURIES?

PROSPECTIVE JUROR: YES.

THE COURT: YOU CAN CONSCIENTIOUSLY FULFILL THE JOB OF BEING A GRAND JUROR SHOULD YOU BE ACCEPTED TO SIT ON THIS PANEL?

PROSPECTIVE JUROR: YES, I CAN.

THE COURT: [redacted] GOOD MORNING.

PROSPECTIVE JUROR: GOOD MORNING.

MY NAME IS [redacted] I LIVE IN [redacted] I'M RETIRED NOW SINCE JUNE OF LAST YEAR. I WAS A PRINCIPAL RESEARCH TECHNICIAN FOR [redacted] I'VE BEEN MARRIED FOR [redacted] YEARS. MY WIFE IS A [redacted] WE DON'T HAVE ANY CHILDREN. AND I WAS ON A CIVIL REAL ESTATE TRIAL FOR A COUPLE OF WEEKS MAYBE 10 OR 12 YEARS AGO. AND I CAN BE FAIR.

THE COURT: [redacted] AS YOU'VE HEARD ME ALLUDE TO, THE GRAND JURY FUNCTION IS TO DETERMINE WHETHER THERE'S ENOUGH EVIDENCE FOR A CASE TO GO FORWARD FOR A FULL-BLOWN TRIAL. THAT'S A PRELIMINARY DECISION IN THE CRIMINAL JUSTICE PROCESS, BUT IT'S AN IMPORTANT DECISION. SOMETIMES THE POWER TO CHARGE SOMEBODY TO BRING AN INDICTMENT AGAINST SOMEBODY IS THE POWER TO RUIN SOMEBODY.

SO WE WANT YOU TO LOOK AT THE CASES CAREFULLY AND ANSWER THE TWO QUESTIONS THAT I MENTIONED TO [redacted] "DO I HAVE A REASONABLE BELIEF THAT A FEDERAL CRIME WAS COMMITTED? AND DO I HAVE A REASONABLE BELIEF, BASED ON THE PRESENTATION OF EVIDENCE SO FAR, THAT THIS PERSON THEY WANT ME TO INDICT HAD SOMETHING TO DO WITH THAT, EITHER COMMITTED IT OR HELPED IN THE COMMISSION OF THE CRIME?"

CAN YOU MAKE DECISIONS SUCH AS THAT IF YOU WERE IMPANELED AS A GRAND JUROR HERE?

PROSPECTIVE JUROR: YES.

THE COURT: THANK YOU.

[redacted] GOOD MORNING.

TELL US ABOUT YOURSELF.

PROSPECTIVE JUROR: I'M [redacted]. I LIVE IN [redacted] I WORK AS A SPEECH PATHOLOGIST. I'M NOT MARRIED. I DON'T HAVE ADULT CHILDREN. I'VE BEEN ON THREE TRIAL JURIES ACROSS THE STREET.

THE COURT: WHAT WAS YOUR MOST RECENT TRIAL JURY

SERVICE, HOW LONG AGO?

PROSPECTIVE JUROR: IN THE '80S.

AND I COULD BE A FAIR JUROR.

THE COURT: YOU MAKE THAT STATEMENT MINDFUL OF THE QUESTIONS THAT I'VE PUT TO THE OTHER PROSPECTIVE GRAND JURORS?

PROSPECTIVE JUROR: YES.

THE COURT: THANK YOU, [redacted]

[redacted] GOOD MORNING.

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE I[redacted] I'M A PRINCIPAL FOR AN ELEMENTARY SCHOOL. I'M MARRIED, AND MY SPOUSE [redacted] I HAVE [redacted]ADULT [redacted]. SHE IS [redacted] I'VE SERVED AS A TRIAL JUROR IN THE STATE COURT IN THE '80S. AND YES, I CAN BE FAIR.

THE COURT: DOES YOUR [redacted]

PROSPECTIVE JUROR: YES. SHE'S [redacted]Y.

THE COURT: [redacted]

WHAT IS THE NATURE OF HER [redacted]? DOES SHE [redacted]?

PROSPECTIVE JUROR: [redacted]

THE COURT: THANK YOU, [redacted]

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE [redacted] I WORK FOR THE POST OFFICE. I'M MARRIED. MY HUSBAND'S [redacted] MY [redacted] I ONLY HAVE [redacted] AND HE

WORKS FOR THE [redacted] I HAVE NO EXPERIENCE. YES, I CAN BE FAIR.

THE COURT: THANK YOU, [redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] I'M A NURSE. I'M MARRIED TO [redacted] I HAVE [redacted] CHILDREN, [redacted] AND [redacted]. AND I'VE NEVER HAD ANY EXPERIENCE AS A TRIAL JUROR.

THE COURT: YOU WATCHED OUR ORIENTATION FILM THIS MORNING AND HAVE IN MIND THE DISTINCTION BETWEEN THE FUNCTION OF THE GRAND JURY AND THE FUNCTION OF THE TRIAL JURY?

PROSPECTIVE JUROR: YES.

THE COURT: YOU'RE PREPARED TO SERVE THE FUNCTION OF A GRAND JUROR?

PROSPECTIVE JUROR: I'LL TRY.

THE COURT: THANK YOU, [redacted]

PROSPECTIVE JUROR: HI. MY NAME IS [redacted]. I LIVE IN [redacted]. I'M A SERVICE FOR THE SOCIAL SECURITY ADMINISTRATION. I'M NOT MARRIED, BUT I'LL BE GETTING MARRIED IN APRIL. I DON'T HAVE ANY CHILDREN. I DON'T HAVE ANY EXPERIENCE AS A TRIAL JUROR. AND YES, I WILL BE FAIR.

THE COURT: [redacted] THANK YOU.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted]. I

LIVE IN [redacted] I'M A SYSTEMS ANALYST FOR A LARGE PUBLISHING COMPANY. MY WIFE IS AN [redacted] I HAVE [redacted] CHILDREN THAT THINK THEY'RE ADULTS, BUT THE OLDEST IS REALLY [redacted] I'VE BEEN ON THREE SUPERIOR COURT TRIALS. AND I'M SURE I CAN FAIR AS A GRAND JUROR.

THE COURT: [redacted] THE PRESENTATION OF EVIDENCE TO THE GRAND JURY IS NECESSARILY ONE-SIDED. THAT'S WHAT THE SYSTEM CONTEMPLATES. YOU'RE GOING TO BE HEARING ONLY FROM THE PROSECUTOR. THE PROSECUTOR IS GOING TO BE PRESENTING EVIDENCE IN SUPPORT OF THE PROPOSED CHARGE.

THERE'S A LATER OPPORTUNITY, IF AN INDICTMENT IS RETURNED, FOR THE PERSON TO DEFEND HIMSELF OR HERSELF AND PRESENT HIS OR HER SIDE OF THE CASE, CONFRONT THE ACCUSERS AND THE WITNESSES AGAINST HIM.

BUT I WANT TO MAKE SURE THAT YOU'RE PREPARED FOR THAT SITUATION; THAT YOU'RE GOING TO BE HEARING JUST ONE SIDE, AND YOU'RE GOING TO BE ASKED TO MAKE A DECISION BASED ON THE PROSECUTOR'S EVIDENCE ALONE.

YOU'RE PREPARED FOR THAT; RIGHT?

PROSPECTIVE JUROR: I UNDERSTAND THAT.

THE COURT: THAT'S ONE OF THE FUNDAMENTAL DIFFERENCES BETWEEN THE FULL ADVERSARY SYSTEM OF A JURY TRIAL AND THEN OUR GRAND JURY PROCEEDING.

NOW, HAVING TOLD YOU THAT, MY EXPERIENCE IS THAT THE PROSECUTORS DON'T PLAY HIDE-THE-BALL. IF THERE'S SOMETHING

ADVERSE OR THAT CUTS AGAINST THE CHARGE, YOU'LL BE INFORMED OF THAT. THEY HAVE A DUTY TO DO THAT.

BUT THAT'S NOT TO SAY THAT EVERY CHARGE WILL PASS MUSTER. THAT'S UP TO YOU AND YOUR FELLOW GRAND JURORS.

UNDERSTANDING THAT THAT'S THE TASK OF THE GRAND JURY, I TAKE IT YOU'RE UP TO IT?

PROSPECTIVE JUROR: I BELIEVE SO.

THE COURT: THANK YOU.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN SAN DIEGO IN THE MISSION HILLS AREA. I'M RETIRED. I WAS A CLINICAL SOCIAL WORKER. I'M SINGLE. NO CHILDREN. I'VE BEEN CALLED FOR JURY SERVICE A NUMBER OF TIMES, BUT I'VE NEVER ACTUALLY BEEN SELECTED AS A JUROR. CAN I BE FAIR? I'LL TRY. BECAUSE OF THE NATURE OF THE WORK THAT I DID, I HAVE SOME FAIRLY STRONG OPINIONS ABOUT SOME OF THE PEOPLE WHO COME INTO THE LEGAL SYSTEM. BUT I WOULD TRY TO WORK WITH THAT.

THE COURT: WE'RE ALL PRODUCTS OF OUR EXPERIENCE. WE'RE NOT GOING TO TRY TO DISABUSE YOU OF EXPERIENCES OR JUDGMENTS THAT YOU HAVE. WHAT WE ASK IS THAT YOU NOT ALLOW THOSE TO CONTROL INVARIABLY THE OUTCOME OF THE CASES COMING IN FRONT OF YOU; THAT YOU LOOK AT THE CASES FRESH, YOU EVALUATE THE CIRCUMSTANCES, LISTEN TO THE WITNESS TESTIMONY, AND THEN MAKE AN INDEPENDENT JUDGMENT.

DO YOU THINK YOU CAN DO THAT?

PROSPECTIVE JUROR: I'LL DO MY BEST.

THE COURT: IS THERE A CERTAIN CATEGORY OF CASE THAT YOU THINK MIGHT BE TROUBLESOME FOR YOU TO SIT ON THAT YOU'D BE INSTINCTIVELY TILTING ONE WAY IN FAVOR OF INDICTMENT OR THE OTHER WAY AGAINST INDICTING JUST BECAUSE OF THE NATURE OF THE CASE?

PROSPECTIVE JUROR: WELL, I HAVE SOME FAIRLY STRONG FEELINGS REGARDING DRUG CASES. I DO NOT BELIEVE THAT ANY DRUGS SHOULD BE CONSIDERED ILLEGAL, AND I THINK WE'RE SPENDING A LOT OF TIME AND ENERGY PERSECUTING AND PROSECUTING CASES WHERE RESOURCES SHOULD BE DIRECTED IN OTHER AREAS.

I ALSO HAVE STRONG FEELINGS ABOUT IMMIGRATION CASES. AGAIN, I THINK WE'RE SPENDING A LOT OF TIME PERSECUTING PEOPLE THAT WE SHOULD NOT BE.

THE COURT: WELL, LET ME TELL YOU, YOU'VE HIT ON THE TWO TYPES OF CASES THAT ARE REALLY KIND OF THE STAPLE OF THE WORK WE DO HERE IN THE SOUTHERN DISTRICT OF CALIFORNIA. AS I MENTIONED IN MY INITIAL REMARKS, OUR PROXIMITY TO THE BORDER KIND OF MAKES US A FUNNEL FOR BOTH DRUG CASES AND IMMIGRATION CASES. YOU'RE GOING TO BE HEARING THOSE CASES I CAN TELL YOU FOR SURE. JUST AS DAY FOLLOWS NIGHT, YOU'RE HEAR CASES LIKE THAT.

NOW, THE QUESTION IS CAN YOU FAIRLY EVALUATE THOSE CASES? JUST AS THE DEFENDANT ULTIMATELY IS ENTITLED TO A FAIR TRIAL AND THE PERSON THAT'S ACCUSED IS ENTITLED TO A FAIR

APPRAISAL OF THE EVIDENCE OF THE CASE THAT'S IN FRONT OF YOU, SO, TOO, IS THE UNITED STATES ENTITLED TO A FAIR JUDGMENT. IF THERE'S PROBABLE CAUSE, THEN THE CASE SHOULD GO FORWARD. I WOULDN'T WANT YOU TO SAY, "WELL, YEAH, THERE'S PROBABLE CAUSE. BUT I STILL DON'T LIKE WHAT OUR GOVERNMENT IS DOING. I DISAGREE WITH THESE LAWS, SO I'M NOT GOING TO VOTE FOR IT TO GO FORWARD." IF THAT'S YOUR FRAME OF MIND, THEN PROBABLY YOU SHOULDN'T SERVE. ONLY YOU CAN TELL ME THAT.

PROSPECTIVE JUROR: WELL, I THINK I MAY FALL IN THAT CATEGORY.

THE COURT: IN THE LATTER CATEGORY?

PROSPECTIVE JUROR: YES.

THE COURT: WHERE IT WOULD BE DIFFICULT FOR YOU TO SUPPORT A CHARGE EVEN IF YOU THOUGHT THE EVIDENCE WARRANTED IT?

PROSPECTIVE JUROR: YES.

THE COURT: I'M GOING TO EXCUSE YOU, THEN. I APPRECIATE YOUR HONEST ANSWERS.

THE COURT: [redacted] DO YOU WANT TO PICK A REPLACEMENT AT THIS POINT?

THE CLERK: YES, SIR.

JUROR NO. [redacted]

THE COURT: LET ME GIVE YOU A MINUTE TO GET A COPY OF THE SHEET. TAKE A LOOK AT IT. I THINK WE KNOW WHO YOU ARE.

[redacted]

PROSPECTIVE JUROR: CORRECT.

I LIVE IN [redacted] MY HUSBAND AND I HAVE OUR OWN BUSINESS. WE ARE ENGINEERING AND MANUFACTURING COMPONENTS FOR [redacted] WE'VE BEEN IN BUSINESS ABOUT [redacted] YEARS NOW. WE'RE DOING REALLY WELL. HE FREAKED OUT WHEN HE TOLD ME I SHOULD JUST TELL YOU I SEE GUILTY PEOPLE.

THE COURT: OH, I SAY THROUGH THE PHONY EXCUSES. YOU THINK OTHERS HAVEN'T TRIED THAT BEFORE.

PROSPECTIVE JUROR: I'M SURE THEY HAVE.

WE'VE BEEN MARRIED 31 YEARS. I HAVE TWO ADULT CHILDREN. ONE'S A [redacted] AND THE OTHER ONE'S A [redacted] STUDENT AT [redacted] IN [redacted] IT'S MY FIRST COURT APPEARANCE. AND I THINK I CAN BE FAIR.

THE COURT: I THINK YOU'LL ACTUALLY ENJOY IT, AND I HOPE YOU'LL BE ABLE TO ACCOMMODATE YOUR WORK SCHEDULE HELPING YOUR HUSBAND WITH THAT.

PROSPECTIVE JUROR: I'M KIND OF CONCERNED ABOUT OUR SCHEDULE.

THE COURT: MOST PEOPLE FIND A WAY TO WORK IT OUT. WE HEAR OFTEN "WELL, I'M SELF-EMPLOYED. THIS IS GOING TO BE A TREMENDOUS FINANCIAL BURDEN."

HERE'S WHAT I'M BUFFETED BY AS THE PERSON CHARGED WITH MAKING THE DECISIONS: THE CONSTITUTION REQUIRES THAT JURIES, TRIAL JURIES AND GRAND JURIES, BE DRAWN FROM A FAIR

AND ACCURATE CROSS-SECTION OF THE COMMUNITY. AND WHAT THE COURTS HAVE SAID OVER THE YEARS IS NO GROUP IS AUTOMATICALLY EXCLUDED. YOU'VE GOT TO LOOK AT EVERYBODY. AND THE EXCUSES HAVE TO BE ON A CASE-BY-CASE BASIS.

AS YOU CAN IMAGINE, IF I EXCUSED EVERYONE WHO HAD FINANCIAL HARDSHIP OR WAS SELF-EMPLOYED, THEN WE WOULD SKEW OUR JURY POOLS. WE WOULD HAVE WHOLE SEGMENTS OF OUR COMMUNITY HERE THAT WERE NOT REPRESENTED, AND THAT WOULDN'T BE CONSISTENT WITH THE CONSTITUTIONAL GUARANTEES.

AND SO I'M THE GUY AT THE FLOODGATE WITH THE BIG WHEEL TRYING TO TURN IT AND MAKE THE DECISIONS. I SAY THAT RELUCTANTLY BECAUSE I'M NOT UNMINDFUL AT ALL OF THE BURDEN IT PLACES ON NOT ONLY SELF-EMPLOYED PEOPLE, BUT PEOPLE WITH REGULAR FULL-TIME JOBS THAT ARE GOING TO BE AWAY FOR A PERIOD OF TIME.

WE DO APPRECIATE YOUR SERVICE. IT'S IMPORTANT SERVICE. YOU SAY THIS IS YOUR FIRST TIME HERE. IF YOU WERE EVER HERE IN SOME OTHER CAPACITY, WITH LITIGATION OF SOME TYPE, WHETHER CIVIL OR CRIMINAL, YOU WOULD WANT CONSCIENTIOUS PEOPLE FROM THE COMMUNITY. THAT'S THE GUARANTEE THAT WE TRY TO GIVE; IS THAT "WE'RE GOING TO GIVE YOU A JUST DECISION, AND IT WILL BE A JURY OF YOUR PEERS, PEOPLE JUST LIKE YOU FROM OUR COMMUNITY WHO WILL MAKE THE DECISION. WE CAN'T CONTINUE TO GIVE THAT GUARANTEE UNLESS WE HAVE PEOPLE WILLING TO SERVE.

I THANK YOU. I APPRECIATE THE SACRIFICE. WELCOME.

WE'RE GLAD TO HAVE YOU.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] AND I'M A JANITOR. I'M MARRIED. MY WIFE IS A [redacted] I HAVE [redacted] ADULT CHILDREN. MY [redacted] IN [redacted] IN [redacted] MY [redacted] IS WORKING [redacted] AN [redacted] AND I HAVE ONCE BEEN A TRIAL JUROR ABOUT 15 YEARS AGO.

THE COURT: CRIMINAL OR CIVIL?

PROSPECTIVE JUROR: CIVIL CASE.

AND I COULD BE FAIR.

THE COURT: YOU MAKE THAT STATEMENT MINDFUL OF THE QUESTIONS I'VE PUT TO OTHERS AND THE ANSWERS THAT THEY'VE GIVEN?

PROSPECTIVE JUROR: YES.

THE COURT: THANK YOU.

[redacted]

PROSPECTIVE JUROR: [redacted] I LIVE IN [redacted] I'M AN ENGINEER FOR THE [redacted] I INSTALL AND MAINTAIN [redacted] I'M NOT MARRIED. I HAVE NO CHILDREN. I HAVE NOT SERVED ON A JURY BEFORE.

THE COURT: ANY TYPE OF JURY?

PROSPECTIVE JUROR: ANY TYPE OF JURY.

I HOPE I CAN BE FAIR.

THE COURT: I THINK YOU CAN BE FAIR.
THE QUESTION IS JUST A TIME PROBLEM; RIGHT?

THE DEFENDANT: YES, SIR.

THE COURT: DOESN'T HAVE TO DO WITH FAIRLY --

PROSPECTIVE JUROR: NO, SIR.

THE COURT: I SPOKE TO YOU AT SIDEBAR ABOUT THAT. IF IT BECOMES A PROBLEM, WE CAN DEAL WITH IT. I'LL REVISIT IT AT SOME LATER TIME.
BUT I THINK THE EXPLANATION I GAVE TO [redacted] ALSO WOULD APPLY IN YOUR CASE. I CAN'T JUST SUMMARILY SAY, "WELL, THIS FELLOW'S GOT A TIME PROBLEM, SO WE'VE GOT TO LET HIM GO."
WHERE'S YOUR DUTY STATION HERE? WHERE'S YOUR WORKPLACE?

PROSPECTIVE JUROR: IN [redacted]

THE COURT: [redacted] THANK YOU. I APPRECIATE YOUR ANSWERS.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted]. I'M A STATISTICIAN AT [redacted] I'M SEPARATED RIGHT NOW. I HAVE TWO [redacted] CHILDREN. I'VE BEEN ON A TRIAL JURY ON A CRIMINAL CASE AT THE SUPERIOR COURT ABOUT TWO YEARS AGO. AND I CAN BE FAIR.

THE COURT: YOU WATCHED THE FILM AND APPRECIATE THE DIFFERENCE BETWEEN THE FUNCTION OF THE GRAND JURY AND THEN WHAT A CRIMINAL TRIAL JURY DOES?

PROSPECTIVE JUROR: YES.

THE COURT: THANK YOU, [redacted]. I'M NOT GOING TO MAKE ANY JOKES ABOUT [redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted]. I LIVE IN [redacted] JUST EAST OF HERE. I'M A PROJECT MANAGER FOR THE CITY OF [redacted] I'M MARRIED. MY WIFE'S A [redacted], BUT SHE'S ON LEAVE RIGHT NOW RAISING [redacted] KIDS; [redacted] AND [redacted] MONTHS. SO THEY'RE NOT ADULTS. I HAVE NO EXPERIENCE SERVING ON ANY JURY OF ANY TYPE. I'VE BEEN SUMMONED. I'VE BEEN EXCUSED FROM ONE OR TWO. I'VE SIMPLY NOT BEEN CALLED FOR OTHERS. I BELIEVE I CAN BE FAIR.

THE COURT: THANK YOU.

[redacted]

PROSPECTIVE JUROR: [redacted] I LIVE IN THE COMMUNITY OF [redacted] I DRIVE A SCHOOL FOR THE [redacted] SCHOOL DISTRICT. MY WIFE IS A [redacted]. I HAVE TWO [redacted] CHILDREN. ONE'S A [redacted] IN [redacted] BACK IN [redacted] MY OTHER SON WORKS AS A [redacted].

THE COURT: HOW LONG HAVE YOU DRIVEN A SCHOOL BUS UP IN THE [redacted]

PROSPECTIVE JUROR: THREE YEARS NOW. ACTUALLY, I'VE ONLY HAD TO DRIVE UP TO [redacted] WITH A BUS FOR ABOUT THREE

MONTHS. MOST OF MY STUFF HAS BEEN IN THE [redacted] AREA. NOW I'M OVER BY [redacted] DRIVING. I DRIVE SPECIAL NEEDS CHILDREN.

THE COURT: IT'S BEEN A WHILE SINCE MY KIDS WERE SMALL. I TOOK THEM TO SNOW.

[redacted] IS UP IN THE MOUNTAINS; RIGHT?

PROSPECTIVE JUROR: JUST ABOVE [redacted] WHERE THE FIRE WAS.

THE COURT: OH. I'M THINKING WAY FARTHER EAST AND COLDER THAN [redacted]

YOU'RE NOT DRIVING OUT IN THE SNOW DURING THE WINTER, ARE YOU?

PROSPECTIVE JUROR: NONE OF THE [redacted] SCHOOLS.

AND I'VE NEVER BEEN ON A JURY AT ALL. I THINK I CAN DO ALL THIS.

THE COURT: YOU HAVE NO RESERVATION ABOUT YOUR ABILITY TO BE FAIR AND IMPARTIAL AND LOOK AT THE EVIDENCE AND PERFORM THE FUNCTION THAT THE GRAND JURY PERFORMS.

PROSPECTIVE JUROR: NO, SIR.

THE COURT: [redacted].

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] I WORK AS A SCHOOL PSYCHOLOGIST. I'M AT THE [redacted] SCHOOL DISTRICT. I AM MARRIED. MY HUSBAND IS A [redacted], SO NOW HE [redacted] I HAVE [redacted]

ADULT STEPCHILDREN. ONE IS AN [redacted] AND ONE IS IN [redacted] I SERVED AS A TRIAL JUROR IN VISTA MAYBE TEN YEARS AGO NOW. AND YES, I CAN BE FAIR.

THE COURT: THANK YOU. I APPRECIATE YOUR ANSWERS.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I'M FROM [redacted] I'M A HOMEMAKER. MY HUSBAND IS A [redacted] OUR [redacted] A [redacted] I'VE NEVER BEEN SELECTED FOR A JURY, ALTHOUGH I WAS CALLED. AND I THINK I CAN BE FAIR.

THE COURT: WERE YOU CALLED UP TO VISTA? IS THAT WHERE YOU WOULD REPORT?

PROSPECTIVE JUROR: YES.

THE COURT: [redacted]

PROSPECTIVE JUROR: MAY NAME IS [redacted] I LIVE IN [redacted] I'M A REAL ESTATE AGENT. NOT MARRIED. NO KIDS. HAVE NOT SERVED. AND AS FAR AS BEING FAIR, IT KIND OF DEPENDS UPON WHAT THE CASE IS ABOUT BECAUSE THERE IS A DISPARITY BETWEEN STATE AND FEDERAL LAW.

THE COURT: IN WHAT REGARD?

PROSPECTIVE JUROR: SPECIFICALLY, MEDICAL MARIJUANA.

THE COURT: WELL, THOSE THINGS -- THE CONSEQUENCES OF YOUR DETERMINATION SHOULDN'T CONCERN YOU IN THE SENSE THAT PENALTIES OR PUNISHMENT, THINGS LIKE THAT -- WE TELL TRIAL JURORS, OF COURSE, THAT THEY CANNOT CONSIDER THE PUNISHMENT OR

THE CONSEQUENCE THAT CONGRESS HAS SET FOR THESE THINGS. WE'D ASK YOU TO ALSO ABIDE BY THAT. WE WANT YOU TO MAKE A BUSINESS-LIKE DECISION AND LOOK AT THE FACTS AND MAKE A DETERMINATION OF WHETHER THERE WAS A PROBABLE CAUSE.

COULD YOU DO THAT? COULD YOU PUT ASIDE STRONG PERSONAL FEELINGS YOU MAY HAVE?

PROSPECTIVE JUROR: IT DEPENDS. I HAVE A VERY STRONG OPINION ON IT. WE LIVE IN THE STATE OF CALIFORNIA, NOT FEDERAL CALIFORNIA. THAT'S HOW I FEEL ABOUT IT VERY STRONGLY.

THE COURT: WELL, I DON'T KNOW HOW OFTEN MEDICAL MARIJUANA USE CASES COME UP HERE. I DON'T HAVE A GOOD FEEL FOR THAT. MY INSTINCT IS THEY PROBABLY DON'T ARISE VERY OFTEN. BUT I SUPPOSE ONE OF THE SOLUTIONS WOULD BE IN A CASE IMPLICATING MEDICAL USE OF MARIJUANA, YOU COULD RECUSE YOURSELF FROM THAT CASE.

ARE YOU WILLING TO DO THAT?

PROSPECTIVE JUROR: SURE.

THE COURT: ALL OTHER CATEGORIES OF CASES YOU COULD GIVE A FAIR, CONSCIENTIOUS JUDGMENT ON?

PROSPECTIVE JUROR: FOR THE MOST PART, BUT I ALSO FEEL THAT DRUGS SHOULD BE LEGAL.

THE COURT: OUR LAWS ARE DIFFERENT FROM THAT. AND AS YOU HEARD ME EXPLAIN TO [redacted] A LOT OF THE CASES THAT COME THROUGH IN OUR COURT ARE DRUG CASES. YOU'LL BE CALLED UPON TO EVALUATE THOSE CASES OBJECTIVELY AND THEN MAKE

THE TWO DETERMINATIONS THAT I STARTED OFF EXPLAINING TO [redacted] "DO I HAVE A REASONABLE BELIEF THAT A CRIME WAS COMMITTED? WHETHER I AGREE WITH WHETHER IT OUGHT TO BE A CRIME OR NOT, DO I BELIEVE THAT A CRIME WAS COMMITTED AND THAT THE PERSON THAT THE GOVERNMENT IS ASKING ME TO INDICT WAS SOMEHOW INVOLVED IN THIS CRIME, EITHER COMMITTED IT OR HELPED WITH IT?"

COULD YOU DO THAT IF YOU SIT AS A GRAND JUROR?

PROSPECTIVE JUROR: THE LAST JURY I WAS ASKED TO SIT ON, I GOT EXCUSED BECAUSE OF THAT REASON.

THE COURT: YOU SAID YOU COULDN'T DO IT? YOUR SENTIMENTS ARE SO STRONG THAT THEY WOULD IMPAIR YOUR OBJECTIVITY ABOUT DRUG CASES?

PROSPECTIVE JUROR: I THINK RAPISTS AND MURDERERS OUGHT TO GO TO JAIL, NOT PEOPLE USING DRUGS.

THE COURT: I THINK RAPISTS AND MURDERERS OUGHT TO GO TO JAIL, TOO. IT'S NOT FOR ME AS A JUDGE TO SAY WHAT THE LAW IS. WE ELECT LEGISLATORS TO DO THAT. WE'RE SORT OF AT THE END OF THE PIPE ON THAT. WE'RE CHARGED WITH ENFORCING THE LAWS THAT CONGRESS GIVES US.

I CAN TELL YOU SOMETIMES I DON'T AGREE WITH SOME OF THE LEGAL DECISIONS THAT ARE INDICATED THAT I HAVE TO MAKE. BUT MY ALTERNATIVE IS TO VOTE FOR SOMEONE DIFFERENT, VOTE FOR SOMEONE THAT SUPPORTS THE POLICIES I SUPPORT AND GET THE LAW CHANGED. IT'S NOT FOR ME TO SAY, "WELL, I DON'T LIKE IT. SO

I'M NOT GOING TO FOLLOW IT HERE."

YOU'D HAVE A SIMILAR OBLIGATION AS A GRAND JUROR EVEN THOUGH YOU MIGHT HAVE TO GRIT YOUR TEETH ON SOME CASES. PHILOSOPHICALLY, IF YOU WERE A MEMBER OF CONGRESS, YOU'D VOTE AGAINST, FOR EXAMPLE, CRIMINALIZING MARIJUANA. I DON'T KNOW IF THAT'S IT, BUT YOU'D VOTE AGAINST CRIMINALIZING SOME DRUGS.

THAT'S NOT WHAT YOUR PREROGATIVE IS HERE. YOUR PREROGATIVE INSTEAD IS TO ACT LIKE A JUDGE AND TO SAY, "ALL RIGHT. THIS IS WHAT I'VE GOT TO DEAL WITH OBJECTIVELY. DOES IT SEEM TO ME THAT A CRIME WAS COMMITTED? YES. DOES IT SEEM TO ME THAT THIS PERSON'S INVOLVED? IT DOES." AND THEN YOUR OBLIGATION, IF YOU FIND THOSE THINGS TO BE TRUE, WOULD BE TO VOTE IN FAVOR OF THE CASE GOING FORWARD.

I CAN UNDERSTAND IF YOU TELL ME "LOOK, I GET ALL THAT, BUT I JUST CAN'T DO IT OR I WOULDN'T DO IT." I DON'T KNOW WHAT YOUR FRAME OF MIND IS. YOU HAVE TO TELL ME ABOUT THAT.

PROSPECTIVE JUROR: I'M NOT COMFORTABLE WITH IT.

THE COURT: DO YOU THINK YOU'D BE INCLINED TO LET PEOPLE GO ON DRUG CASES EVEN THOUGH YOU WERE CONVINCED THERE WAS PROBABLE CAUSE THEY COMMITTED A DRUG OFFENSE?

PROSPECTIVE JUROR: IT WOULD DEPEND UPON THE CASE.

THE COURT: IS THERE A CHANCE THAT YOU WOULD DO THAT?

PROSPECTIVE JUROR: YES.

THE COURT: I APPRECIATE YOUR ANSWERS. I'LL EXCUSE YOU AT THIS TIME.

THE CLERK: [redacted]

THE COURT: GOOD MORNING, [redacted]

PROSPECTIVE JUROR: GOOD MORNING.

THE COURT: LET ME GIVE YOU A MINUTE TO GET ORIENTED.

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] I'M A CONTRACT ADMINISTRATOR FOR THE STATE OF CALIFORNIA ON THEIR [redacted] PROJECTS. I'M NOT MARRIED. I DON'T HAVE ANY CHILDREN. I HAVE EXPERIENCE IN THE '80'S AS A TRIAL JUROR. AND I CAN BE FAIR.

THE COURT: DO YOU HAVE ANYTHING TO DO WITH GETTING THE TELEPHONE POLES DOWN IN MY NEIGHBORHOOD?

PROSPECTIVE JUROR: NO, BUT I CAN GET YOU A NUMBER TO CALL.

THE COURT: THAT'S GOOD ENOUGH. WE'RE GOING TO KEEP YOU ON THIS GRAND JURY.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] I'M A SPECIAL ED ASSISTANT AT [redacted] SCHOOL DISTRICT. I'VE BEEN THERE FOR ABOUT [redacted] YEARS. I'VE BEEN MARRIED FOR [redacted] YEARS. MY HUSBAND IS [redacted] HE [redacted] I HAVE [redacted] ADULT CHILDREN: ONE'S A [redacted] MY [redacted] BOYS WORK FOR THE [redacted] IN [redacted] AND THEY WORK FOR A COMPANY WHERE THEY GO INTO THE [redacted] AND THE [redacted] TO COPY OFF [redacted] RECORDS.

THE COURT: THEY BOTH HAVE THE SAME JOB, SAME JOB FUNCTIONS?

PROSPECTIVE JUROR: YES. WELL, ACTUALLY, MY OLDER BOY HAD THIS JOB FOR -- HE'S BEEN WORKING FOR THE COMPANY FOR A LONG TIME.

THE COURT: TOLD HIS BROTHER "THIS IS A GOOD GIG"?

PROSPECTIVE JUROR: YEAH. HIS BROTHER WAS WORKING IN [redacted] FOR A WHILE. THEN THE JOB OPENED UP, AND MY YOUNGER ONE NOW IS WORKING THERE. HE GOES ALSO ALL OVER [redacted]

THE COURT: WHERE'S THE OLDER BROTHER?

PROSPECTIVE JUROR: THE OLDER BROTHER NOW IS IN [redacted] THINGS WERE A LITTLE BIT BETTER FOR HIM TO GROW AND BE ABLE TO BUY A HOME. SO HE'S OVER THERE WITH HIS WIFE AND TWO KIDS.

I HAVE BEEN ON A JURY BEFORE FOR FEDERAL IN 1980 MAYBE. A LONG, LONG TIME AGO. I'VE BEEN CALLED FOR SUPERIOR COURT IN EL CAJON AND HERE IN SAN DIEGO.

THE COURT: DID YOU WATCH OUR ORIENTATION FILM THIS MORNING AND APPRECIATE THE DIFFERENCE IN FUNCTIONS BETWEEN GRAND JURIES AND TRIAL JURIES?

PROSPECTIVE JUROR: YES.

THE COURT: ANY REASON YOU CAN THINK OF WHY YOU WOULDN'T BE FAIR AND IMPARTIAL?

PROSPECTIVE JUROR: NO. I CAN BE FAIR.

THE COURT: THANK YOU, [redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I COME FROM [redacted] WHICH IS [redacted] I WORK FOR THE POST OFFICE. I'M A MAIL CARRIER. I'M DIVORCED. I HAVE ONE ADULT [redacted] SHE WORKS IN A [redacted] AND ALSO AT THE [redacted] DOWN THERE. I'VE BEEN ON TWO TRIALS: ONE WAS A CRIMINAL, SPOUSAL ABUSE; AND THE OTHER ONE WAS A CRIMINAL **.

THE COURT: WAS THAT OUT IN [redacted]

PROSPECTIVE JUROR: SUPERIOR COURT, YES.

AND YES, I CAN BE FAIR.

THE COURT: HOW LONG WAS YOUR DRIVE OVER TODAY?

PROSPECTIVE JUROR: TWO HOURS.

THE COURT: DID THE DESERT FLOWERS START TO BLOOM YET?

PROSPECTIVE JUROR: NOT YET.

THE COURT: WHEN DOES THAT HAPPEN?

PROSPECTIVE JUROR: JUST ABOUT MAY, USUALLY.

THE COURT: WHAT TIME WOULD [redacted] HAVE TO BE HERE ORDINARILY?

THE CLERK: THEY TELL YOU YOU CAN COME OVERNIGHT.

PROSPECTIVE JUROR: YES, I FOUND THAT OUT WHEN I GOT HERE.

THE COURT: IF THE DRIVE'S NOT GOING TO BE A PROBLEM, YOU'RE HAPPY TO SERVE?

PROSPECTIVE JUROR: I CAN SERVE, YES.

THE COURT: WE'RE HAPPY TO HAVE YOU HERE.

THE SOUTHERN DISTRICT OF CALIFORNIA, LADIES AND GENTLEMEN, COMPRISES BOTH SAN DIEGO COUNTY -- AND MOST OF US ARE FROM SAN DIEGO COUNTY -- AND ALSO IMPERIAL COUNTY. WE TRY TO PULL RANDOMLY BUT SYSTEMATICALLY FROM IMPERIAL COUNTY, TOO. IT'S NOT OUT OF THE ORDINARY. IT'S A LITTLE UNUSUAL THAT I'LL GET MORE THAN ONE OR TWO IMPERIAL COUNTY PROSPECTIVE JURORS EVEN ON A TRIAL JURY.

BUT WE'RE HAPPY TO HAVE YOU, TEN-GALLON HAT AND ALL.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN THE [redacted] I'M RETIRED. I'VE BEEN RETIRED FOR SIX YEARS.

THE COURT: WHAT KIND OF WORK DID YOU DO?

PROSPECTIVE JUROR: I WAS IN THE PRINTING INDUSTRY FOR [redacted] YEARS.

MY WIFE IS [redacted] WE HAVE [redacted] ADULT CHILDREN: TWO OF THEM LIVE [redacted] ONE'S AN [redacted] THE OTHER IS A [redacted] AND MY OTHER [redacted] LIVES IN [redacted]

SHE'S A [redacted]

THE COURT: DID THE [redacted] SING IN THE SHOWER WHEN [redacted] LIVED AT HOME?

PROSPECTIVE JUROR: [redacted] STILL SINGS IN THE SHOWER. AND I'VE BEEN CALLED A FEW TIMES, BUT HAVE NOT SERVED ON ANY JURIES. AND I CERTAINLY CAN BE FAIR.

THE COURT: THANK YOU, [redacted] WE'RE HAPPY TO HAVE YOU.

FINALLY, [redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] I'M AN ACTIVE REAL ESTATE BROKER. MY WIFE IS [redacted]E HAVE [redacted] ADULT CHILDREN: [redacted]F THEM ARE MARRIED, AND ONE'S A [redacted] I HAVE NO EXPERIENCE AS A JUROR. HOWEVER, I HAVE SERVED AS A WITNESS FOR THE GRAND JURY.

THE COURT: YOU'VE ACTUALLY BEEN CALLED AS A WITNESS BEFORE A GRAND JURY?

PROSPECTIVE JUROR: YES, I HAVE.

THE COURT: HOW LONG AGO WAS THAT?

PROSPECTIVE JUROR: I WOULD SAY ABOUT TEN YEARS. AND YES, I CAN BE FAIR.

THE COURT: WELL, YOU MAY KNOW FROM YOUR EXPERIENCE THAT IF YOU HAVE COUNSEL AS A WITNESS, YOUR COUNSEL DOESN'T ACCOMPANY YOU IN TO THE GRAND JURY. THE HALLMARK OF THE GRAND JURY IS THAT IT'S A SECRET PROCEEDING AND NECESSARILY SO.

BECAUSE IF YOU, AS A GRAND JURY, DECIDE NO CHARGES SHOULD BE BROUGHT, THEN NO ONE'S THE WORSE FOR THE WEAR. NO ONE EVER KNOWS ABOUT THAT.

WE DO ALLOW WITNESSES TO CONSULT WITH THEIR LAWYERS, BUT THEY MUST LEAVE THE GRAND JURY ROOM, CONSULT OUTSIDE WITH THE LAWYER, AND THEN COME BACK IN. SO THAT'S WHAT YOU CAN EXPECT IF THERE ARE WITNESSES WHO ARE REPRESENTED BY COUNSEL.

PROSPECTIVE JUROR: IT WAS SO SECRETIVE THAT I DIDN'T EVEN KNOW WHAT I WAS THERE FOR.

THE COURT: I'M GOING TO TOUCH ON THAT IN MY REMARKS. BUT IT'S VERY IMPORTANT THAT -- IT'S CHARACTERISTIC OF THE GRAND JURY, AND YOU WILL BE UNDER LEGAL OBLIGATIONS NOT TO SPEAK OF WHAT GOES ON IN FRONT OF THE GRAND JURY. THERE'S A LOT OF INTEREST SERVED BY THAT SECRECY, AS I SAID.

ORDINARILY, EVERYTHING IS SUPPOSED TO BE TRANSCRIBED. WE'RE SUPPOSED TO KNOW WHAT OUR GOVERNMENT IS DOING. BUT THIS IS ONE AREA WHERE TRADITIONALLY THE COURTS AND EVERYONE ELSE SAYS, "NO. WE NEED TO HAVE CONFIDENTIALITY AND SECRECY HERE." I TOUCHED ON ONE OF THE REASONS WHY IT HAS TO DO WITH NOT RUINING THE REPUTATIONS OF PEOPLE, FOR EXAMPLE, WHO MAY BE UNDER INVESTIGATION, BUT NO CHARGES EVER RESULT. SOMETIMES THE POWER TO INDICT SOMEONE CAN BE THE POWER TO RUIN A REPUTATION.

THERE ARE A LOT OF OTHER GOOD REASONS WHY THE GRAND JURY HAS TO FUNCTION SECRETLY. FIRST, IT PROMOTES YOUR

SECURITY. PEOPLE WON'T KNOW THAT YOU'RE GRAND JURORS UNLESS YOU TELL THEM. A LOT OF TIMES THE CRIMES UNDER INVESTIGATION, THE GOVERNMENT IS NOT SURE YET WHETHER IT'S A CRIME. WE NEED THE HELP OF THE GRAND JURY IN ASCERTAINING WHAT'S GOING ON. SO THEY DON'T WANT TO TIP THEIR HAND AND SAY, "WE'RE LOOKING AT SOMETHING." THEY DON'T WANT PEOPLE TO TAKE MEASURES TO COVER UP CRIMINAL ACTIVITIES.

ON OTHER OCCASIONS, SOMEONE WHO KNOWS HE'S THE OBJECT OF AN INVESTIGATION MIGHT FLEE TO A DIFFERENT COUNTRY AND GET OUTSIDE THE JURISDICTION OF THE UNITED STATES WHERE THEY COULDN'T BE REACHED.

SO ALL OF THOSE REASONS AND OTHERS PROMOTE THE POLICY OF GRAND JURY SECRECY. YOU TOUCHED ON SOMETHING THAT'S VERY IMPORTANT. IT WILL BE INCUMBENT UPON ALL OF YOU TO MAINTAIN THE SECRECY OF THE GRAND JURY IF YOU TAKE THE OATH AND SERVE AS GRAND JURORS.

HOW'S THE REAL ESTATE MARKET THESE DAYS, SLOW?

PROSPECTIVE JUROR: IT'S A LITTLE SLOW. I SPECIALIZE IN INVESTMENT PROPERTIES.

THE COURT: SOME THINGS ARE HELPING, THOUGH; RIGHT? THE MORTGAGE RATES ARE STARTING TO DROP?

PROSPECTIVE JUROR: THEY'VE DROPPED A LITTLE BIT.

THE COURT: THAT OUGHT TO HELP.

PROSPECTIVE JUROR: YEAH. THE MARKET'S STILL PRETTY HIGH HERE IN SAN DIEGO PRICE-WISE.

THE COURT: I READ WHERE PEOPLE ARE JUST STAYING LONGER. THE SELLERS ARE NOT GIVING UP THEIR PLACES FOR LESS. THEY JUST SAY, "WELL, WE'LL STICK IT OUT. WE'LL DIG IN OUR HEELS AND STAY."

IS THAT WHAT YOU'RE EXPERIENCING, TOO?

PROSPECTIVE JUROR: YES, I FIND A LOT OF THAT. WHAT YOU HAVE TO REALIZE IS THAT A LOT OF PEOPLE, IF THEY JUST BOUGHT RECENTLY AND THEY'RE TRYING TO GET OUT OR THEY BOUGHT SOME SECONDARY PROPERTY AND SO ON, THOSE ARE THE PEOPLE THAT ARE HAVING PROBLEMS.

THE COURT: THEY'RE A LITTLE BIT UNDERWATER?

PROSPECTIVE JUROR: SOME OF THEM ARE, YES.

THE COURT: THANK YOU, [redacted] I APPRECIATE YOUR ANSWERS.

LADIES AND GENTLEMEN, HAVING SPOKEN WITH ALL OF YOU AND PASSED ON YOUR GENERAL QUALIFICATIONS TO SIT, IT'S NOW MY RESPONSIBILITY TO SELECT TWO OF YOUR NUMBER: ONE AS A FOREPERSON, THE OTHER AS A DEPUTY FOREPERSON. THE FOREPERSON PRESIDES OVER THE DELIBERATIONS OF THE GRAND JURY AND ACTS AS THE CONTACT WITH BOTH THE COURT AND THE U.S. ATTORNEY'S OFFICE.

NEITHER THE FOREPERSON OR THE DEPUTY FOREPERSON HAVE ANY GREATER SAY. IT'S THE DELIBERATIVE PROCESS. THE 23 OF YOU ALL HAVE AN EQUAL SAY.

BUT I THINK, HAVING LISTENED TO YOUR ANSWERS AND

EVALUATED YOUR BACKGROUNDS, IT APPEARS TO ME, [redacted] HAVING PRIOR GRAND JURY SERVICE, THAT YOU WOULD BE A GOOD PERSON TO ACT AS THE FOREPERSON OF THE GRAND JURY.

ARE YOU UP TO THE TASK AND WILLING TO ACCEPT THAT ASSIGNMENT?

PROSPECTIVE JUROR: I AM.

THE COURT: THE COURT WOULD THEN APPOINT [redacted] AS THE FOREPERSON OF THIS GRAND JURY.

[redacted] ARE YOU WILLING TO SERVE AS THE DEPUTY FOREPERSON?

PROSPECTIVE JUROR: CERTAINLY.

THE COURT: YOU WOULD BE THE PRESIDING GRAND JUROR IN THE ABSENCE OF [redacted]

THOSE ARE THE DESIGNATIONS I WOULD MAKE, THEN: [redacted] AS FOREPERSON; [redacted] AS DEPUTY FOREPERSON.

--000--

THE CLERK: NEXT PANEL, 07-2, THIS IS THE THURSDAY PANEL.

[redacted]

[redacted]

THE COURT: GOOD MORNING.

[redacted]

PROSPECTIVE JUROR: I'[redacted] I LIVE [redacted] I'M A [redacted] FOR AN INDIAN TRIBE IN [redacted] I'M MARRIED. MY HUSBAND IS A [redacted] I DO NOT HAVE ANY CHILDREN. I HAVE NOT BEEN A JUROR BEFORE. AND YES, I CAN BE FAIR.

THE COURT: YOU'VE HAD THE ADVANTAGE OF SITTING THROUGH ONE IMPANELMENT ALREADY. YOU HEARD THE QUESTIONS

GENERALLY THAT I POSED TO THE OTHER PROSPECTIVE GRAND JURORS ABOUT THE DIFFERENCES BETWEEN TRIAL JURIES AND GRAND JURIES AND WHETHER INDIVIDUALS COULD FULFILL THAT FUNCTION.

WOULD YOUR ANSWERS HAVE BEEN BASICALLY THE SAME AS THOSE THAT I'VE BEEN GIVEN WITH THE EXCEPTION OF THE TWO PEOPLE THAT HAVE BEEN EXCUSED?

PROSPECTIVE JUROR: YES.

THE COURT: [redacted]

PROSPECTIVE JUROR: I'M [redacted] I LIVE IN [redacted] I WORK FOR AN INSURANCE COMPANY [redacted] I'M MARRIED. MY WIFE IS A [redacted] I HAVE [redacted] KIDS AGE [redacted] AND [redacted] I'VE BEEN A JUROR BEFORE PROBABLY TEN YEARS AGO ON KIND OF A LOW-LEVEL CRIMINAL CASE. AND IN THE NAME OF FULL DISCLOSURE, I'D PROBABLY SUGGEST I'D BE THE FLIPSIDE OF SOME OF THE INDIVIDUALS WHO HAVE CONVEYED THEIR CONCERNS PREVIOUSLY. I HAVE A STRONG BIAS FOR THE U.S. ATTORNEY, WHATEVER CASES THEY MIGHT BRING. I DON'T THINK THEY'RE HERE TO WASTE OUR TIME, THE COURT'S TIME, THEIR OWN TIME. I APPRECIATE THE EVIDENTIARY STANDARDS, I GUESS, MORE OR LESS, AS A LAYPERSON WOULD; THAT THEY ARE CALLED UPON IN ORDER TO BRING THESE CASES OR SEEK AN INDICTMENT.

AND THE GATEKEEPER ROLE THAT I GUESS WE'RE BEING ASKED TO PLAY IS ONE THAT I'D HAVE A DIFFICULT TIME, IN ALL HONESTY. I'M PROBABLY SUGGESTING THAT THE U.S. ATTORNEY'S CASE WOULD BE ONE THAT I WOULD BE WILLING TO STAND IN FRONT

OF; IN OTHER WORDS, PREVENT FROM GOING TO A JURY.

THE COURT: IT SOMETIMES HAPPENS THAT AT THE TIME THE CASE IS INITIALLY PRESENTED TO THE U.S. ATTORNEY'S OFFICE, THINGS APPEAR DIFFERENTLY THAN 10 DAYS LATER, 20 DAYS LATER WHEN IT'S PRESENTED TO A GRAND JURY. THAT'S WHY THIS GATEKEEPER ROLE IS VERY, VERY IMPORTANT.

YOU'RE NOT PART OF THE PROSECUTING ARM. YOU'RE INTENDED TO BE A BUFFER INDEPENDENT OF THE U.S. ATTORNEY'S OFFICE. AND THE REAL ROLE OF THE GRAND JURY IS TO MAKE SURE THAT UNSUBSTANTIATED CHARGES DON'T GO FORWARD.

YOU'VE HEARD MY GENERAL COMMENTS. YOU HAVE AN APPRECIATION ABOUT HOW AN UNSUBSTANTIATED CHARGE COULD CAUSE PROBLEMS FOR SOMEONE EVEN IF THEY'RE ULTIMATELY ACQUITTED.

YOU APPRECIATE THAT; RIGHT?

PROSPECTIVE JUROR: I THINK I COULD APPRECIATE THAT, YES.

THE COURT: AND SO WE'RE -- LOOK, I'LL BE HONEST WITH YOU. THE GREAT MAJORITY OF THE CHARGES THAT THE GRAND JURY PASSES ON THAT ARE PRESENTED BY THE U.S. ATTORNEY'S OFFICE DO GO FORWARD. MOST OF THE TIME, THE GRAND JURY PUTS ITS SEAL OF APPROVAL ON THE INITIAL DECISION MADE BY THE U.S. ATTORNEY.

OBVIOUSLY, I WOULD SCREEN SOMEBODY OUT WHO SAYS, "I DON'T CARE ABOUT THE EVIDENCE. I'M NOT GOING TO PAY ATTENTION TO THE EVIDENCE. IF THE U.S. ATTORNEY SAYS IT'S GOOD, I'M

GOING TO GO WITH THAT." IT DIDN'T SOUND LIKE THAT'S WHAT YOU WERE SAYING. YOU WERE SAYING YOU GIVE A PRESUMPTION OF GOOD FAITH TO THE U.S. ATTORNEY AND ASSUME, QUITE LOGICALLY, THAT THEY'RE NOT ABOUT THE BUSINESS OF TRYING TO INDICT INNOCENT PEOPLE OR PEOPLE THAT THEY BELIEVE TO BE INNOCENT OR THE EVIDENCE DOESN'T SUBSTANTIATE THE CHARGES AGAINST. THAT'S WELL AND GOOD.

YOU MUST UNDERSTAND THAT AS A MEMBER OF THE GRAND JURY, YOU'RE THE ULTIMATE ARBITER. THEY DON'T HAVE THE AUTHORITY TO HAVE A CASE GO FORWARD WITHOUT YOU AND FELLOW GRAND JURORS' APPROVAL. I WOULD WANT YOU NOT TO JUST AUTOMATICALLY DEFER TO THEM OR SURRENDER THE FUNCTION AND GIVER THE INDICTMENT DECISION TO THE U.S. ATTORNEY. YOU HAVE TO MAKE THAT INDEPENDENTLY.

YOU'RE WILLING TO DO THAT IF YOU'RE RETAINED HERE?

PROSPECTIVE JUROR: I'M NOT A PERSON THAT THINKS OF ANYBODY IN THE BACK OF A POLICE CAR AS NECESSARILY GUILTY, AND I WOULD DO MY BEST TO GO AHEAD AND BE OBJECTIVE. BUT AGAIN, JUST IN THE NAME OF FULL DISCLOSURE, I FELT LIKE I SHOULD LET YOU KNOW THAT I HAVE A VERY STRONG PRESUMPTION WITH RESPECT TO ANY DEFENDANT THAT WOULD BE BROUGHT IN FRONT OF US.

THE COURT: I UNDERSTAND WHAT YOU'RE SAYING. LET ME TELL YOU THE PROCESS WILL WORK MECHANICALLY. THEY'RE GOING TO CALL WITNESSES. AND WHAT THEY'RE GOING TO ASK YOU TO DO IS EVALUATE THE TESTIMONY YOU HEAR FROM WITNESSES.

BEFORE YOU REACH A POINT WHERE YOU VOTE ON ANY INDICTMENT, THE U.S. ATTORNEY AND THE STENOGRAPHER LEAVE. THE ONLY PEOPLE LEFT WHEN THE VOTE IS TAKEN ARE THE GRAND JURORS THEMSELVES. THAT'S THE WAY THE PROCESS IS GOING TO WORK.

YOU'RE GOING TO HAVE TO SAY EITHER "WELL, IT HAS THE RING OF TRUTH TO ME, AND I THINK IT HAPPENED THE WAY IT'S BEING SUGGESTED HERE. AT LEAST I'M CONVINCED ENOUGH TO LET THE CASE GO FORWARD" OR "THINGS JUST DON'T HAPPEN LIKE THAT IN MY EXPERIENCE, AND I THINK THIS SOUNDS CRAZY TO ME. I WANT EITHER MORE EVIDENCE OR I'M NOT CONVINCED BY WHAT'S BEEN PRESENTED AND I'M NOT GOING TO LET IT GO FORWARD."

CAN YOU MAKE AN OBJECTIVE ON FACTS LIKE THE ONES I'VE JUST DESCRIBED?

PROSPECTIVE JUROR: I WOULD DO MY BEST TO DO THAT. I CERTAINLY WOULD WANT ME SITTING ON A GRAND JURY IF I WERE A DEFENDANT COMING BEFORE THIS GRAND JURY. HAVING SAID THAT, I WOULD DO MY BEST. I HAVE TO ADMIT TO A STRONG BIAS IN FAVOR OF THE U.S. ATTORNEY THAT I'M NOT SURE I COULD OVERCOME.

THE COURT: ALL I'M TRYING TO GET AT IS WHETHER YOU'RE GOING TO AUTOMATICALLY VOTE TO INDICT IRRESPECTIVE OF THE FACTS.

A FEW YEARS AGO, I IMPANELED A FELLOW HERE THAT WAS A SERGEANT ON THE SHERIFF'S DEPARTMENT. AND YEARS AGO WHEN I WAS A PROSECUTOR, I WORKED WITH HIM. HE WAS ALL ABOUT ARRESTING AND PROSECUTING PEOPLE. BUT WHEN HE GOT HERE, HE

SAID, "LOOK, I UNDERSTAND THAT THIS IS A DIFFERENT FUNCTION. I CAN PERFORM THAT FUNCTION." HE SERVED FAITHFULLY AND WELL FOR A NUMBER OF -- OVER A YEAR, I THINK. 18 MONTHS, MAYBE. HE EVENTUALLY GOT A PROMOTION, SO WE RELIEVED HIM FROM THE GRAND JURY SERVICE.

BUT, YOU KNOW, HE TOOK OFF ONE HAT AND ONE UNIFORM AND PUT ON A DIFFERENT HAT ON THE DAYS HE REPORTED TO THE GRAND JURY. HE WAS A POLICEMAN. HE'D BEEN INVOLVED IN PROSECUTING CASES. BUT HE UNDERSTOOD THAT THE FUNCTION HE WAS PERFORMING HERE WAS DIFFERENT, THAT IT REQUIRED HIM TO INDEPENDENTLY AND OBJECTIVELY ANALYZE CASES AND ASSURED ME THAT HE COULD DO THAT, THAT HE WOULD NOT AUTOMATICALLY VOTE TO INDICT JUST BECAUSE THE U.S. ATTORNEY SAID SO.

AGAIN, I DON'T WANT TO PUT WORDS IN YOUR MOUTH. BUT I DON'T HEAR YOU SAYING THAT THAT'S THE EXTREME POSITION THAT YOU HAVE. I HEAR YOU SAYING INSTEAD THAT COMMON SENSE AND YOUR EXPERIENCE TELLS YOU THE U.S. ATTORNEY'S NOT GOING TO WASTE TIME ON CASES THAT LACK MERIT. THE CONSCIENTIOUS PEOPLE WHO WORK FOR THE U.S. ATTORNEY'S OFFICE AREN'T GOING TO TRY TO TRUMP UP PHONY CHARGES AGAINST PEOPLE.

MY ANECDOTAL EXPERIENCE SUPPORTS THAT, TOO. THAT DOESN'T MEAN THAT EVERY CASE THAT COMES IN FRONT OF ME I SAY, "WELL, THE U.S. ATTORNEY'S ON THIS. THE PERSON MUST BE GUILTY." I CAN'T DO THAT. I LOOK AT THE CASES STAND-ALONE, INDEPENDENT, AND I EVALUATE THE FACTS. I DO WHAT I'M CHARGED

WITH DOING, WHICH IS MAKING A DECISION BASED ON THE EVIDENCE THAT'S PRESENTED.

SO THAT'S THE QUESTION I HAVE FOR YOU. I CAN UNDERSTAND THE DEFERENCE TO THE U.S. ATTORNEY. AND FRANKLY, I AGREE WITH THE THINGS THAT YOU'RE SAYING. THEY MAKE SENSE TO ME. BUT AT THE END OF THE DAY, YOUR OBLIGATION IS STILL TO LOOK AT THESE CASES INDEPENDENTLY AND FORM AN INDEPENDENT CONSCIENTIOUS BUSINESS-LIKE JUDGMENT ON THE TWO QUESTIONS THAT I'VE MENTIONED EARLIER: DO I HAVE A REASONABLE BELIEF THAT A CRIME WAS COMMITTED? DO I HAVE A REASONABLE BELIEF THAT THE PERSON TO BE CHARGED COMMITTED IT OR HELPED COMMIT IT?

CAN YOU DO THAT?

PROSPECTIVE JUROR: AGAIN, I WOULD DO MY BEST TO DO THAT. BUT I DO BRING A VERY, VERY STRONG BIAS. I BELIEVE THAT, FOR EXAMPLE, THE U.S. ATTORNEY WOULD HAVE OTHER FACTS THAT WOULD RISE TO LEVEL THAT THEY'D BE ABLE TO PRESENT TO US THAT WOULD BEAR ON THE TRIAL. I WOULD LOOK AT THE CASE AND PRESUME AND BELIEVE THAT THERE ARE OTHER FACTS OUT THERE THAT AREN'T PRESENTED TO US THAT WOULD ALSO BEAR ON TAKING THE CASE TO TRIAL. I'D HAVE A VERY DIFFICULT TIME.

THE COURT: YOU WOULDN'T BE ABLE TO DO THAT. WE WOULDN'T WANT YOU TO SPECULATE THAT THERE'S OTHER FACTS THAT HAVEN'T BEEN PRESENTED TO YOU. YOU HAVE TO MAKE A DECISION BASED ON WHAT'S BEEN PRESENTED.

BUT LOOK, I CAN TELL YOU I IMAGINE THERE'S PEOPLE IN

THE U.S. ATTORNEY'S OFFICE THAT DISAGREE WITH ONE ANOTHER ABOUT THE MERITORIOUSNESS OF A CASE OR WHETHER A CASE CAN BE WON AT A JURY TRIAL.

IS THAT RIGHT, MR. ROBINSON?

MR. ROBINSON: ON OCCASION, YOUR HONOR. NOT VERY OFTEN.

THE COURT: IT COMES UP EVEN IN AN OFFICE WITH PEOPLE CHARGED WITH THE SAME FUNCTION. I DON'T WANT TO BEAT YOU UP ON THIS, [redacted] I'M EQUALLY CONCERNED WITH SOMEBODY WHO WOULD SAY, "I'M GOING TO AUTOMATICALLY DROP THE TRAP DOOR ON ANYBODY THE U.S ATTORNEY ASKS." I WOULDN'T WANT YOU TO DO THAT. IF YOU THINK THERE'S A POSSIBILITY YOU'LL DO THAT, THEN I'D BE INCLINED TO EXCUSE YOU.

PROSPECTIVE JUROR: I THINK THAT THERE'S A POSSIBILITY I WOULD BE INCLINED TO DO THAT.

THE COURT: I'M GOING TO EXCUSE YOU, THEN. THANK YOU. I APPRECIATE YOUR ANSWERS.

LADIES AND GENTLEMEN, IF YOU'LL GIVE ME JUST A SHORT PAUSE. I'M GOING TO RECESS THIS PROCEEDING. I HAVE A JURY TRIAL OUT. THE JURY HAS SENT A QUESTION. I'M GOING TO DISCUSS HOW TO ANSWER THE QUESTION WITH COUNSEL. YOU'RE ALL WELCOME TO STAY AND LISTEN TO THIS. WE'LL BE IN RECESS MOMENTARILY.

--OOO--

THE COURT: NOW BACK TO THE GRAND JURY IMPANELMENT.

AND WE WERE ABOUT TO CALL A REPLACEMENT FOR [redacted]

THE CLERK: [redacted]

THE COURT: GOOD MORNING, [redacted]

PROSPECTIVE JUROR: GOOD MORNING. MY NAME IS [redacted] I LIVE IN [redacted] I'M RETIRED. MARRIED FOR [redacted] YEARS.

THE COURT: GOOD FOR YOU. YOU KNOW WHAT THEY SAY ABOUT THAT. THE REASON THAT COUPLES CAN STICK TOGETHER THAT LONG, ALL THOSE YEARS YOU'VE BOTH BEEN IN LOVE WITH THE SAME MAN.

PROSPECTIVE JUROR: MY HUSBAND [redacted]

THE COURT: [redacted]

PROSPECTIVE JUROR: AND HE'S BEEN [redacted]

THE COURT: HE'S AN ALUMNUS OF THE [redacted] HE WENT TO [redacted]

PROSPECTIVE JUROR: I WENT TO [redacted] COLLEGE.

THE COURT: I'M A GRADUATE OF PT. LOMA COLLEGE. PROBABLY A LITTLE BEFORE YOU.

PROSPECTIVE JUROR: I DON'T THINK SO. I HAVE [redacted] ADULT CHILDREN. MY [redacted] WORKS FOR [redacted] SHE'S IN [redacted]. ONE [redacted] WORKS WITH [redacted] AND I HAVE A [redacted] WHO

WORKS FOR [redacted]

THE COURT: IS HE AN [redacted]

PROSPECTIVE JUROR: [redacted] HE WORKS FOR THE [redacted]

I'VE BEEN ON TWO TRIALS: ONE WAS A MUNICIPAL COURT TRIAL. IT WASN'T CRIMINAL. MONEY WAS INVOLVED. AND THE OTHER ONE WAS A CRIMINAL. AND THE FIRST ONE WAS IN THE '80'S SOMETIME. THE LAST ONE WAS PROBABLY TEN YEARS AGO. AND YES, I CAN BE FAIR.

THE COURT: HOW'S THE [redacted] GOING.

PROSPECTIVE JUROR: VERY WELL.

THE COURT: WHEN I WAS STILL A COLLEGE STUDENT, WE HAD EMBARKED UPON A SPEAKERS PROGRAM. I GOT TOGETHER WITH [redacted] AT [redacted] AND WE MADE AN ARRANGEMENT WHERE THE SPEAKERS WOULD COME. AND THESE WERE [redacted] THE [redacted] DRAWS IN PEOPLE OF STATURE THAT HAVE SOMETHING IMPORTANT TO SAY.

WE USED TO HAVE THEM STAY AT THE [redacted] AND THE [redacted] SAID THAT "IF THEY'LL POSE FOR A PICTURE HERE AT THE [redacted] THEN ALL THE ACCOMMODATIONS ARE ON US," WHICH WAS A GREAT ACCOMMODATION FOR OUR LITTLE TINY SPEAKERS PROGRAM. BUT THEY WOULD SPEAK AT THE COLLEGE THE NIGHT BEFORE BACK IN 1976, AND THEN THEY'D GO TO [redacted] THE NEXT DAY.

SO I HAVE FOND MEMORIES OF THAT. PLEASE GIVE [redacted] MY REGARDS.

PROSPECTIVE JUROR: I WILL.

THE COURT: [redacted]

PROSPECTIVE JUROR: I'M [redacted] I LIVE IN [redacted] [redacted]EARS IN THE NAVY AS A NAVAL AVIATOR. 28 YEARS IN INDUSTRY, IN R&D, DEFENSE INDUSTRY. I'M MARRIED. MY WIFE IS [redacted] SHE DID [redacted] [redacted] ADULT CHILDREN, ALL OVER 40: [redacted]OF THEM PRODUCED CHILDREN FOR A LIVING, I THINK. MY DAUGHTER IS [redacted] IN [redacted] I HAVE A [redacted] UP IN THE BAY AREA WHO'S IN [redacted]AND ONE [redacted] IN [redacted]WHO DOES [redacted]FOR [redacted] ONE'S A [redacted] WHO [redacted] AT [redacted]AND [redacted]THE [redacted] I HAVE BEEN SELECTED AND BOUNCED OFF A NUMBER OF FEDERAL AND STATE JURIES, BUT I DID SERVE ON ONE CIVIL CASE IN THE SUPERIOR COURT. I UNDERSTAND THE DISTINCTION BETWEEN THAT WORK AND THE GRAND JURY.

THE COURT: THE BASIS FOR BOUNCING YOU, WERE YOU PRO PROSECUTION OR PRO DEFENSE?

PROSPECTIVE JUROR: I THINK HALF THE TIME IT WAS JUST THE MILITARY EXPERIENCE. THE STORY IS IN COURT MARTIAL, IF IT WEREN'T TRUE, THEY WOULDN'T HAVE CHARGED THEM TYPE OF THING.

THE COURT: YOU HEARD [redacted] HE ADHERED TO THAT KIND OF BELIEF IN THIS CIVILIAN PROCEEDING.

YOU'RE NOT OF THAT FRAME OF MIND?

PROSPECTIVE JUROR: NO.

THE COURT: IT'S UNFAIR TO ASK YOU WHY YOU WERE BOUNCED. I'D HAVE TO ASK THE LAWYERS. WHEN WE PICK TRIAL JURIES A LOT OF TIME, SOME PEOPLE -- I TALK TO PEOPLE LIKE MY NEIGHBORS AND ALL. THEY SAY, "THEY BOUNCED ME OFF." THEY'RE UPSET ABOUT IT. AND I TRY TO ASSUAGE THEM BY SAYING, "LOOK, LET ME TELL YOU SOMETHING." AND THIS IS IN A TRIAL JURY CONTEXT. "IT REALLY SAYS MORE ABOUT THE LAWYER THAN IT DOES ABOUT YOU. BECAUSE LAWYERS HAVE THESE IDEAS OF WHO THEY WANT ON A JURY OR WHAT THE COMPOSITION OF THE JURY OUGHT TO BE."

EVA'S HEARD ME TELL THIS STORY BEFORE. WHEN I WAS A YOUNG LAWYER TRYING CASES JUST STARTING OUT, MY RULE OF THUMB AS TO THE TEN CHALLENGES I HAD WAS NO ONE YOUNGER THAN I AM. IF THEY'RE YOUNGER THAN I AM, THEY HAVEN'T HAD TO MAKE HARD DECISIONS. THEY DON'T HAVE A SUFFICIENT STAKE IN THE COMMUNITY. I COULD RATTLE OFF THREE OR FOUR JUSTIFICATIONS FOR IT.

THE TRUTH OF THE MATTER IS I PROBABLY BOUNCED A LOT OF PEOPLE THAT WOULD HAVE BEEN FINE. IT REALLY ILLUSTRATES THE POINT THAT IT SAYS MORE ABOUT THE LAWYER THAN IT SAYS ABOUT THE PERSON BEING BOUNCED.

THANK YOU, [redacted] I APPRECIATE YOUR ANSWERS.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] I'M A PRODUCTION SCHEDULER. I'M

MARRIED. MY WIFE [redacted] I HAVE [redacted] BOYS FROM [redacted] TO [redacted]

THE COURT: YOU POOR SOUL.

PROSPECTIVE JUROR: I HAVE NO TRIAL EXPERIENCE, AND I COULD BE FAIR.

THE COURT: MY GOODNESS.

WHAT'S THE AGE SPAN BETWEEN YOUR BOYS?

PROSPECTIVE JUROR: FROM [redacted] TO [redacted]. THEY KEEP ME VERY BUSY.

THE COURT: I RAISED TWO THAT WERE TWO YEARS APART, AND THAT KEPT ME RUNNING ALL THE TIME.

YOU HAVE [redacted] HUH?

PROSPECTIVE JUROR: WE TRIED FOR A GIRL, AND IT NEVER WORKED.

THE COURT: DO YOU HAVE BROTHERS AND SISTERS?

PROSPECTIVE JUROR: I HAVE ANOTHER BROTHER AND TWO SISTERS.

THE COURT: HIGH INCIDENCE OF BOYS IN YOUR FAMILY?

PROSPECTIVE JUROR: VERY MUCH.

THE COURT: DID YOUR MOTHER HAVE A LOT OF BOYS, TOO?

PROSPECTIVE JUROR: MY SISTER HAS [redacted] BUT MY COUSINS, IT'S LIKE [redacted] BOYS AND [redacted] GIRLS.

THE COURT: IT MUST BE SOMETHING IN ONE'S GENETIC CODE. WE HAVE TO ASK THE DOCTOR, THE GENETICIST, ABOUT IT. MY FAMILY TREE RUNS THE SAME WAY, ALMOST ALL BOYS. ALL OF US

KNOCK OUT BOYS. I DIDN'T KEEP GOING.

PROSPECTIVE JUROR: I'M DONE.

THE COURT: THANK YOU, [redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] I'M A REGISTERED NURSE. I'M MARRIED. WE HAVE [redacted] ADULT CHILDREN. MY HUSBAND WORKS FOR [redacted] HE'S A [redacted] ONE [redacted] IS A [redacted] WHO WORKS FOR [redacted] A [redacted] IS [redacted] AND ANOTHER [redacted] IS AN [redacted] AND ONE [redacted] IS A [redacted] I HAVE NO EXPERIENCE AS A JUROR. AND I THINK I CAN BE FAIR.

THE COURT: [redacted] YOU'RE GOING TO HEAR CASES, I'M SURE, INVOLVING AGENTS [redacted]

YOU SAID YOUR OTHER SON IS A [redacted]

PROSPECTIVE JUROR: HE'S AN [redacted]

THE COURT: ONE'S AN [redacted] AND THE OTHER IS.

PROSPECTIVE JUROR: A [redacted]

THE COURT: I THOUGHT YOU HAD TWO [redacted]

JUST ONE?

PROSPECTIVE JUROR: MY HUSBAND WORKS FOR [redacted]ND [redacted]

THE COURT: YOU'RE GOING TO BE HEARING CASES FROM [redacted] AND [redacted]

CAN YOU BE OBJECTIVE ABOUT THOSE CASES? CAN YOU LISTEN TO THE FACTS AND MAKE A STAND-ALONE DECISION ON EACH CASE WITHOUT INSTINCTIVELY SAYING, "WELL, THEY WORK FOR THE [redacted] AS MY SON OR MY HUSBAND."

PROSPECTIVE JUROR: I THINK I CAN BE FAIR.

THE COURT: THAT WOULD BE YOUR OBLIGATION. YOU'RE NOT AUTOMATICALLY DISQUALIFIED. AS YOU HEARD ME SAY, WE HAD A SERGEANT ON THE SHERIFF'S DEPARTMENT THAT WAS SERVING ON ONE OF OUR GRAND JURIES. SO IT'S NOT AUTOMATICALLY DISQUALIFYING. BUT YOU HAVE TO BE ABLE TO ASSURE ME THAT "I'LL LOOK AT THESE CASES INDEPENDENTLY. I UNDERSTAND THE IMPORTANCE OF ACTING AS A BUFFER BETWEEN THE GOVERNMENT'S POWER TO CHARGE SOMEONE WITH A CRIME AND THEN BRINGING THEM TO TRIAL. AND I'LL FULFILL THAT FUNCTION CONSCIENTIOUSLY."

YOU CAN DO THAT?

PROSPECTIVE JUROR: I CAN DO THAT.

THE COURT: THANK YOU.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] I'M A TRAFFIC ENGINEER WITH THE CITY OF [redacted]

THE COURT: MAYBE YOU CAN GET THOSE TELEPHONE POLES DOWN. I HAVE A BIG POLE RIGHT ON THE LEFT SIDE. I JUST READ

IN THE PAPER THAT WE'RE GOING TO PAY MORE FOR OUR TELEPHONE BILLS SO THAT THEY CAN TAKE ALL THESE POLES DOWN, AND I EXPECTED TO HEAR THAT CHAINSAWS THE NEXT MORNING. YOU CAN BET WHEN THE NEXT BILL COMES, I'M GOING TO HAVE THE ASSESSMENT.

YOU DON'T KNOW ANYTHING ABOUT THAT?

PROSPECTIVE JUROR: THE PEOPLE IN THE UTILITIES PROGRAM KNOW.

I'M NOT MARRIED. I DON'T HAVE ANY CHILDREN. I WAS JUST ON A CRIMINAL CASE IN THE SUPERIOR COURT JUST LAST MONTH. SO I'M GETTING HIT AGAIN HERE. AND I UNDERSTAND THE DIFFERENCE BETWEEN TRIAL AND --

THE COURT: I WAS GOING TO SAY, YOU MUST BE REPORTING EARLY AND OFTEN IF YOU'VE BEEN CALLED FOR BOTH STATE AND FEDERAL SERVICE AT THE SAME TIME.

PROSPECTIVE JUROR: I CAN BE FAIR.

THE COURT: THANK YOU, [redacted]

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] I'M AN INVESTIGATOR AND HOUSING COORDINATOR FOR THE [redacted] I'M MARRIED FOR 12 YEARS. MY HUSBAND IS [redacted] WE DON'T HAVE CHILDREN BY CHOICE. I DON'T HAVE ANY EXPERIENCE IN THE COURT SYSTEM. I CAN BE FAIR. IT WOULD BE AN HONOR, SIR.

THE COURT: THANK YOU. I APPRECIATE YOUR ANSWERS.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] I'M A CHILDCARE WORKER/MENTAL HEALTH WORKER WORKING WITH ABUSED -- PHYSICALLY AND SEXUALLY ABUSED CHILDREN. I'M NOT MARRIED. I DON'T HAVE ANY KIDS. I DON'T HAVE ANY EXPERIENCE AS A TRIAL JUROR. YES, I CAN BE FAIR.

THE COURT: THANK YOU, [redacted]

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] CALIFORNIA. THAT'S [redacted]

THE COURT: WELCOME.

PROSPECTIVE JUROR: I'M AN AIRCRAFT MECHANIC FOR [redacted] I'M MARRIED. MY WIFE IS A [redacted]

THE COURT: DO YOU HAVE ANY LAW ENFORCEMENT FUNCTION AT ALL?

PROSPECTIVE JUROR: I'M [redacted]

I HAVE TWO ADULT BOYS. AND I HAVE NO EXPERIENCE IN FEDERAL COURT. AND I CAN BE FAIR.

THE COURT: YOU CAN EVALUATE THESE CASES INDEPENDENTLY? YOU'RE ACTING AS A CITIZEN AND NOT SO MUCH AS A [redacted] DO YOU UNDERSTAND THAT?

PROSPECTIVE JUROR: YES.

THE COURT: [redacted] IS THE [redacted] CALIFORNIA?

PROSPECTIVE JUROR: THAT'S ABOUT IT.

THE COURT: MY SON JUST WENT OVER TO THE [redacted] WE DROVE HIM IN THE SUMMER. I WANTED TO GET OVER THERE QUICKLY. SOMEBODY WARNED ME AFTERWARDS THAT THEY'RE A VERY AGGRESSIVE [redacted] HIGHWAY PATROL.

PROSPECTIVE JUROR: THEY'RE OUT THERE.

THE COURT: CAN I USE YOUR NAME IN CASE I GET STOPPED?

THANK YOU, [redacted]

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted]. I LIVE IN [redacted] I DO CONVENTION SERVICES AT THE [redacted] IN [redacted] I'M NOT MARRIED. I HAVE NO KIDS. I DON'T HAVE ANY EXPERIENCE AS A TRIAL JUROR. AND I COULD BE FAIR.

THE COURT: THANK YOU. WE'RE GLAD TO HAVE YOU.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] MY WIFE AND I ARE BOTH RETIRED. WE HAVE [redacted] ADULT CHILDREN.

THE COURT: WHAT WAS YOUR WORK BEFORE YOU RETIRED?

PROSPECTIVE JUROR: I WAS [redacted] YEARS AN EDUCATOR.

AND WE HAVE NINE GRANDCHILDREN. OUR IMMEDIATE ADULT CHILDREN, ONE IS A SUCCESSFUL [redacted]. ONE IS A SUCCESSFUL [redacted] MY [redacted] OF [redacted] IN [redacted] AND PART OF [redacted] AND

UNFORTUNATELY, MY OTHER SON HAS [redacted] HE HAS BEEN [redacted]OR SEVERAL YEARS. I'VE HAD EXPERIENCE ON ONE TRIAL. IT WAS A CRIMINAL CASE AT THE VISTA COURTHOUSE. AND I CERTAINLY CAN BE FAIR.

THE COURT: THANK YOU.

[redacted]GOOD AFTERNOON.

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] I'M MARRIED. I HAVE [redacted]CHILDREN. ONE IS A [redacted] MY WIFE IS A [redacted] IN [redacted] MY SON IS A [redacted] AT [redacted] I'M A CONTRACT OFFICER FOR THE NAVY WORKING AT THE [redacted] AT [redacted] AND I'VE BEEN CALLED THREE TIMES. I'VE NEVER BEEN IMPANELED ON A JURY. I'VE STATED MY PRO POLICE VIEWS.

THE COURT: YOU CAN SERVE IN THIS FUNCTION AS A GRAND JUROR OBJECTIVELY, LOOK AT THE EVIDENCE, AND ANSWER THE QUESTIONS THAT I'VE REPEATED NOW SEVERAL TIMES: DO I HAVE A REASONABLE BELIEF THAT A CRIME WAS COMMITTED? DO I HAVE A REASONABLE BELIEF THAT THE PERSON THEY WANT ME TO INDICT EITHER COMMITTED THE CRIME OR ASSISTED WITH IT?

PROSPECTIVE JUROR: YES, SIR.

THE COURT: THANK YOU, [redacted]

[redacted]

PROSPECTIVE JUROR: [redacted]. I LIVE IN [redacted]

THE COURT: HOW IS THAT?

PROSPECTIVE JUROR: I LOVE BEING [redacted] I WOULD HAVE WALKED TODAY, EXCEPT I THINK IT'S GOING TO RAIN.

I'M A CPA. I'M MARRIED. NO CHILDREN. AND I HAVE NEVER SERVED ON A JURY. AND I CAN BE FAIR.

THE COURT: THANK YOU [redacted]

PROSPECTIVE JUROR: [redacted] I LIVE IN [redacted] I DO NOT WORK. I'VE BEEN MARRIED FOR [redacted] YEARS. MY HUSBAND IS RETIRED FROM THE [redacted] BUT NOW IS A [redacted]

THE COURT: WHAT WAS HIS JOB WITH THE [redacted]

PROSPECTIVE JUROR: HE WAS A [redacted] BUT ALWAYS WORKED IN [redacted]

THE COURT: WHAT DOES HE DO NOW AS A [redacted] WITH THE [redacted]

PROSPECTIVE JUROR: HE'S A [redacted] EMPLOYEE. HE WORKS IN [redacted] AND THEN, FOR EXAMPLE, [redacted] HE'LL BE WORKING [redacted] AT THE [redacted]

THE COURT: LET'S HOPE THEY WIN THAT GAME.

PROSPECTIVE JUROR: YES.

THE COURT: I'M A LITTLE WORRIED ABOUT IT. I WAS

TORN WITH THE KANSAS CITY CHIEFS. I WAS HOPING -- I THOUGHT THEY WOULD BE THE EASIER TEAM FOR THE CHARGERS TO BEAT.

PROSPECTIVE JUROR: WE HAVE [redacted] ADULT [redacted] AND [redacted] GRANDCHILDREN. OUR [redacted] IS A [redacted] AND [redacted] FOR [redacted]. OUR [redacted] IS A [redacted] FOR [redacted] COMPANY IN [redacted] I'VE BEEN CALLED, BUT NEVER SERVED ON A JURY. YES, I COULD BE FAIR.

THE COURT: YOU SAY THAT MINDFUL OF EVERYTHING YOU LEARNED ON THE TAPE AND ALL THE QUESTIONS AND ANSWERS THAT HAVE BEEN GIVEN SO FAR?

PROSPECTIVE JUROR: YES.

THE COURT: [redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN THE [redacted] I'M UNEMPLOYED AT THE CURRENT TIME. I'M A HOUSEWIFE. I WAS A BOOKKEEPER FOR SEVERAL YEARS. I'VE BEEN MARRIED FOR 19. MY SPOUSE IS A [redacted] WE HAVE [redacted] ADULT [redacted], BOTH WHO LIVE IN [redacted] ONE WORKS IN [redacted] THE OTHER [redacted] I THINK I WAS CALLED FOR TRIAL JURY OVER AT SUPERIOR COURT ABOUT 15 YEARS AGO, BUT I DON'T REMEMBER -- I DON'T THINK I WAS IMPANELED, AT LEAST NOT THAT I REMEMBER. I LIKE THINGS TO BALANCE OUT. I LIKE TO FIND HOW THINGS WORK. THAT'S WHY I ENJOY WORKING WITH NUMBERS. I GREW UP ABOUT 20 MINUTES AWAY FROM GILLETTE STADIUM.

THE COURT: YOU'RE WORRIED, TOO.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] NOW. I JUST MOVED DOWN THERE FROM [redacted] I WORK FROM HOME AS A MORTGAGE BROKER, AND I'VE DONE THAT FOR [redacted] YEARS. NO KIDS. NEVER BEEN MARRIED. I HAVE BEEN CALLED FOR JURY DUTY, BUT NEVER PULLED UP FROM MAIN SELECTION. AND YES, I CAN BE FAIR.

THE COURT: THANK YOU.

[redacted]

PROSPECTIVE JUROR: [redacted] I LIVE IN [redacted] I DON'T WORK. I'M MARRIED. MY HUSBAND WORKS FOR [redacted] I HAVE [redacted] KIDS. NO EXPERIENCE. AND I CAN BE FAIR.

THE COURT: WHAT DOES HE DO FOR THE [redacted]

PROSPECTIVE JUROR: HE'S [redacted].

THE COURT: WAS HE A [redacted]

PROSPECTIVE JUROR: NO. HE [redacted]. HE'S [redacted] FOR A MILLION YEARS. HE TRAVELS. WE LIVE [redacted] AND HE JUST TRAVELS.

THE COURT: WHERE DO THEY DO [redacted]

PROSPECTIVE JUROR: [redacted]

THE COURT: YOU JOIN HIM SOMETIMES FOR [redacted].

PROSPECTIVE JUROR: YES.

THE COURT: THANK YOU.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE [redacted] I WORK AT A CHILDREN'S BOOK STORE IN [redacted] I'M MARRIED. MY HUSBAND WORKS [redacted] MY [redacted] ADULT CHILDREN, MY OLDEST [redacted] GRADUATED FROM [redacted] AS A [redacted] HE'S A [redacted]. MY SECOND [redacted] GRADUATED FROM [redacted] HE'S AN [redacted] I'VE BEEN CALLED TO JURY DUTY, BUT NEVER IMPANELED. I CAN BE FAIR.

THE COURT: LET ME TEST MY MEMORY WITH YOU. "WHERE THE WILD THINGS ARE."

PROSPECTIVE JUROR: [redacted]

THE COURT: IS THAT BOOK STILL VERY POPULAR?

PROSPECTIVE JUROR: VERY. I CAN'T KEEP IT ON THE SHELF. THAT'S WHAT EVERYBODY WANTS FOR A BABY GIFT.

THE COURT: [redacted]. DO YOU USE THAT BOOK WITH YOUR BOYS?

PROSPECTIVE JUROR: YES.

THE COURT: THANK YOU.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] I'M A TEACHER AND A COACH FOR ADOLESCENT KIDS; HEALTH, P.E., LA CROSSE. I'M MARRIED. MY SPOUSE IS [redacted]. HE'S GONE BACK TO

SCHOOL. HE TINKERS IN THE [redacted] I DON'T HAVE ADULT CHILDREN. I HAVE HAD EXPERIENCE IN CRIMINAL AND CIVIL CASES.

THE COURT: HOW MUCH EXPERIENCE? YOU'VE SAT ON BOTH CRIMINAL AND CIVIL JURIES?

PROSPECTIVE JUROR: YES, SIR.

THE COURT: WHEN WAS YOUR MOST RECENT JURY EXPERIENCE?

PROSPECTIVE JUROR: APPROXIMATELY FIVE YEARS AGO, A CIVIL CASE.

THE COURT: LET ME PUT TO YOU THE QUESTION THAT I PUT TO MANY WHO'VE HAD BOTH TYPES OF JURY EXPERIENCE.

YOU UNDERSTAND THE DISTINCTION HERE THAT THIS GRAND JURY WOULD PERFORM A DIFFERENT FUNCTION FROM THE ONE --

PROSPECTIVE JUROR: I UNDERSTAND THAT.

THE COURT: AND [redacted] I WANT TO MAKE SURE I GOT YOUR LAST ANSWER.

YOU CAN BE FAIR?

PROSPECTIVE JUROR: I CAN BE FAIR.

THE COURT: THANK YOU.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I LIVE IN [redacted] I'M A CATHOLIC DEACON AT A CHURCH [redacted] AND I'M ALSO PRESIDENT OF A COMPANY IN [redacted] THAT MAKES [redacted] FOR [redacted] I'VE BEEN MARRIED FOR [redacted] YEARS. MY WIFE IS A [redacted]

WORK. I HAVE [redacted] ADULT CHILDREN AND TWO GRANDCHILDREN. MY [redacted] IS A [redacted] FOR [redacted] THE [redacted] MY [redacted] DOES [redacted] ON [redacted] AT [redacted] AT [redacted] AND HE'S PRESENTLY [redacted] AS WE DISCUSSED. TEN YEARS AGO, I WAS A JUROR ON A CIVIL CASE. AND I HAVE TO SAY I'M SOFT ON IMMIGRATION BECAUSE I'VE DONE VOLUNTEER WORK WITH IMMIGRANTS IN THE FIELD. BUT I DO NOT THINK THAT WOULD STAND IN MY WAY OF MAKING FAIR AND OBJECTIVE DECISIONS.

THE COURT: AS YOU HEARD ME EXPLAIN EARLIER TO ONE OF THE PROSPECTIVE GRAND JURORS, WE'RE NOT ABOUT TRYING TO CHANGE PEOPLE'S PHILOSOPHIES OR ATTITUDES HERE. THAT'S NOT MY BUSINESS. BUT WHAT I HAVE TO INSIST ON IS THAT YOU FOLLOW THE LAW THAT'S GIVEN TO US BY UNITED STATES CONGRESS. WE ENFORCE THE FEDERAL LAWS HERE.

I THINK I CONFESSED ALOUD THAT THERE'S SOME OF THE LAWS THAT I DISAGREE WITH THAT I HAVE TO ENFORCE. SO IT'S NOT ABOUT ME OR MY PHILOSOPHIES. IT'S ABOUT PERFORMING A CONSCIENTIOUS FUNCTION HERE AND SEEING IF THE FACTS SUPPORT AN OUTCOME ONE WAY OR THE OTHER.

CAN YOU DO THAT?

PROSPECTIVE JUROR: I DON'T THINK I WOULD HAVE ANY PROBLEM.

THE COURT: THANK YOU.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted] I

LIVE IN [redacted] I HAVE WORKED AS A CHEMICAL ENGINEER, AS A LAWYER, AS A SOCIAL WORKER, AND AS A LAW SCHOOL PROFESSOR.

THE COURT: WHAT WAS DISCIPLINE IN THE LAW? WERE YOU AN INTELLECTUAL PROPERTY LAWYER?

PROSPECTIVE JUROR: NO. LABOR LAW AND PERSUASIVE WRITING AT [redacted]

THE COURT: WHEN YOU PRACTICED, WHERE DID YOU PRACTICE?

PROSPECTIVE JUROR: I WAS WITH CORPORATIONS IN NEW YORK; [redacted] WHO BUILT THE [redacted] THAT I WAS INVOLVED IN. I WENT FROM THAT TO [redacted] WHO BUILT THE [redacted] AND I WENT IN-HOUSE WITH [redacted] BUT I'VE ALSO BEEN WITH LARGE LAW FIRMS IN [redacted] AND [redacted]

THE COURT: INTERESTING AND VARIED LEGAL CAREER, HUH?

PROSPECTIVE JUROR: YES.

I'VE BEEN MARRIED FOR [redacted] YEARS TWICE AND NOT DIVORCED. THAT ALSO ADDS UP TO [redacted] HAPPY YEARS. MY CURRENT WIFE WORKS FOR THE [redacted] SHE [redacted] INCIDENTALLY, SHE WAS [redacted] WHO [redacted] FROM HIS [redacted]

THE COURT: HER FIRST HUSBAND?

PROSPECTIVE JUROR: YES.

THE COURT: INTERESTING.

MR. [redacted] IS TALKING ABOUT THE CASE THAT PROBABLY ALL OF US KNOW FROM TV, THE MIRANDA DECISION, WHERE YOU HAVE TO TELL THE SUSPECTS BEFORE YOU QUESTION THEM "YOU HAVE A RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN AND WILL BE HELD AGAINST YOU IN A COURT OF LAW."

HE WAS THE LAWYER FOR ERNESTO MIRANDA, HUH?

PROSPECTIVE JUROR: THAT WAS AN ACLU CASE.

WHEN [redacted]

THE COURT: HE GOT KILLED IN A BAR FIGHT IN PHOENIX YEARS AFTER HE WAS VINDICATED.

PROSPECTIVE JUROR: THAT'S RIGHT. WHEN THE POLICE CAME TO ARREST THE SUSPECT, THEY KNEW THEY HAD TO READ SOMETHING TO HIM. THEY WEREN'T SURE WHAT. AND THE OTHER POLICEMAN WHO WAS LOOKING THROUGH THE VICTIM'S -- MIRANDA'S WALLET SAID, "LOOK HERE. I FOUND SOMETHING. I THINK THIS IS IT." SO THE GUY WHO KILLED MIRANDA WAS READ HIS MIRANDA RIGHTS FROM WHAT WAS IN MIRANDA'S WALLET.

THE COURT: AMONG THE MEMORABILIA THAT [redacted], DID HE ACTUALLY AUTOGRAPH ANY OF THOSE CARDS?

PROSPECTIVE JUROR: I DIDN'T GO THROUGH IT. IT WAS BOXES AND BOXES OF PAPERS.

THE COURT: I WOULD IMAGINE IN THIS DAY, THAT WOULD

BE SOMETHING THAT COULD FETCH MONEY ON EBAY.

PROSPECTIVE JUROR: THAT WAS PRE-EBAY.

I HAD [redacted]NATURAL CHILDREN, TWO OF WHOM ARE ALIVE. ONE IS A [redacted] AND THE OTHER HAS A [redacted] ONE OF MY CHILDREN WHO DIED WAS A LITIGATION ATTORNEY IN [redacted]. I HAVE [redacted] STEPCHILDREN. ONE IS A CRIMINAL DEFENSE LAWYER IN [redacted] COUNTY, AND THE OTHER IS AN [redacted] I WAS SEATED AS A CRIMINAL JUROR IN SUPERIOR COURT. WE ACQUITTED. AND I CERTAINLY CAN BE FAIR.

THE COURT: THANK YOU, [redacted] I APPRECIATE YOUR ANSWERS.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted]. I GO BY [redacted] AFTER A TWO-YEAR MISSION FOR MY CHURCH, I WAS FORTUNATE TO MARRY MY CHILDHOOD SWEETHEART. WE'VE BEEN MARRIED FOR [redacted] YEARS. SHE'S A DOMESTIC GODDESS. WE HAVE [redacted] CHILDREN. WE HAVE ONE [redacted] OUR [redacted] OLDER ARE MARRIED. OUR [redacted] IS A STUDENT. OUR OTHER CHILDREN, ONE IS IN [redacted] THE OTHER IS THE [redacted] WITH [redacted] AS FAR AS MY LIVING, I'M AN ARCHITECT. I'M [redacted]. WE SPECIALIZE IN [redacted], GENERALLY MORE TOWARDS INSTITUTIONAL WORK. WE DO LIBRARIES FOR THE CITY OF [redacted] AND [redacted] I HAVE EXPERIENCE IN TERMS OF TRIAL, BUT IT'S LIMITED TO EXPERT WITNESS PRIMARILY ON ZONING ISSUES AND

CONSTRUCTION DEFECT. I'VE PROBABLY BEEN INVOLVED IN SOMEWHERE BETWEEN 13 AND 15 OF THOSE KINDS OF CASES. YOUR HONOR, I WILL BE FAIR.

THE COURT: THANK YOU VERY MUCH, [redacted] I APPRECIATE YOUR ANSWERS.

[redacted]

PROSPECTIVE JUROR: MY NAME IS [redacted]. I LIVE IN [redacted]. I'M A REALTOR, AND MY HUSBAND IS A [redacted]. WE HAVE ONE [redacted] WHO IS [redacted]. I HAVE HAD NO EXPERIENCE WITH BEING A JUROR. I CAN BE FAIR.

THE COURT: THANK YOU, [redacted]

ONCE AGAIN, I HAVE TO MAKE A DETERMINATION HERE OF WHO MIGHT BE THE FOREPERSON AND DEPUTY FOREPERSON.

[redacted] HOW ABOUT YOU? ARE YOU UP TO THE TASK OF SERVING AS THE FOREPERSON? LET ME TELL YOU ABOUT THE ROLE OF A FOREPERSON.

PROSPECTIVE JUROR: I HAD [redacted] AGO. I'M DOING FINE, BUT SOME DAYS --

THE COURT: I'M GOING TO APPOINT A DEPUTY FOREPERSON, TOO. LET ME TELL YOU WHAT THE FUNCTION IS.

IT USED TO BE WHEN THE GRAND JURY DECIDED ON A GROUP OF CASES AND DECIDED TO RETURN INDICTMENTS IN CASES, THE ENTIRE GRAND JURY WOULD HAVE TO COME DOWN AND AFFIRM THAT "THESE ARE OUR DECISIONS." A FEW YEARS AGO, FIVE, SIX, SEVEN YEARS AGO, CONGRESS PASSED A LAW THAT SAID, "WE'LL ALLOW THE

FOREPERSON OF THE GRAND JURY TO COME DOWN AND REPRESENT TO THE COURT THE RESULTS OF GRAND JURY BALLOTING"

SO TYPICALLY, AS YOU HEARD ME MENTION, ONCE THE GRAND JURY SESSION IS THROUGH FOR THE DAY, THE GRAND JURY FOREPERSON OR DEPUTY FOREPERSON WILL COME DOWN AND ATTEST TO THE COURT ALONG WITH THE APPROPRIATE PAPERWORK THE RESULTS OF GRAND JURY'S WORK FOR THE DAY. THAT WOULD BE ABOUT IT.

THE OTHER THING IS THE U.S. ATTORNEY WOULD LOOK TO YOU TO HELP SCHEDULE SESSIONS WITH THE GRAND JURY, TO GET A CONSENSUS AMONG GRAND JURORS ABOUT BREAKS OR HOW LONG YOU WANT TO GO, THAT TYPE OF THING. I DON'T WANT TO SAY IT'S NOT IMPORTANT, BUT IT'S NOT GOING TO TAX YOUR RESOURCES MUCH MORE, I DON'T THINK, THAN JUST SIMPLY SERVING AS A GRAND JUROR. THERE IS A LITTLE MORE INVOLVED, AND YOU HAVE A TITLE.

PROSPECTIVE JUROR: I'D RATHER BE THE DEPUTY.

THE COURT: WELL, THEN, LET'S SWITCH PLACES.

[redacted] I WAS GOING TO CALL UPON YOU TO SEE IF YOU'D BE INTERESTED IN BEING A DEPUTY. [redacted] WOULD DEFER TO YOU AS THE FOREPERSON.

ARE YOU WILLING TO TAKE THAT ASSIGNMENT?

PROSPECTIVE JUROR: I WOULD BE.

THE COURT: I'LL APPOINT [redacted] AS THE FOREPERSON OF THE GRAND JURY AND [redacted] AS THE DEPUTY FOREPERSON.

NOW, I MENTIONED THE POSSIBILITY THAT THERE MIGHT BE PEOPLE THAT WANTED TO SWITCH BETWEEN THURSDAY AND FRIDAY

PANELS. I'VE BEEN INFORMED THAT ONE OF THE GRAND JURORS FROM THE FIRST PANEL, THE WEDNESDAY PANEL, WOULD PREFER TO SIT ON THURSDAYS.

IS THERE ANYONE ON THIS THURSDAY PANEL -- OKAY. ALL RIGHT.

LET ME TAKE FIRST THINGS FIRST.

TURNING MY ATTENTION BACK TO THE WEDNESDAY PANEL, WHO IS IT THAT WOULD PREFER -- [redacted]?

I'M GOING TO TRY TO GET YOU IN ORDER.

[redacted] SPOKE UP FIRST.

[redacted], [redacted], [redacted]

LET ME SEE IF I HAVE FOUR SIMILARLY SITUATED PEOPLE ON THURSDAY THAT WANT TO GO TO WEDNESDAY.

MR. COOPER, I'M GOING TO SWITCH YOU WITH [redacted]

[redacted], I'LL SWITCH YOU WITH [redacted]

[redacted], I'LL SWITCH YOU WIT[redacted]

AND [redacted] I'LL SWITCH YOU WITH [redacted]

IS THERE ANYONE ELSE WHO EITHER WANTS TO SWITCH OR IS INDIFFERENT?

[redacted] I'LL SWITCH YOU WITH [redacted]

I LIKE TO BE ACCOMMODATING TO EVERYBODY. AND SEEING NO MORE HANDS, I'M NOT GOING TO MAKE ANY MORE INQUIRIES.

[redacted] WILL YOU STAND.

[redacted]

I PROPOSE SWITCHING THE TWO OF THEM.

DO YOU WANT THEM TO SWITCH PHYSICALLY RIGHT NOW?

THE CLERK: NO.

THE COURT: [redacted] AND [redacted] THOSE TWO WILL SWITCH.

[redacted] AND [redacted] WILL SWITCH.

[redacted] AND [redacted] WILL SWITCH.

[redacted] ON THE END AND [redacted]

WE'LL MAKE THOSE SWITCHES AT THE APPROPRIATE TIME.

LADIES AND GENTLEMEN, THOSE OF YOU WHO HAVE BEEN SELECTED TO SIT ON THE GRAND JURY, IF YOU'LL STAND AND RAISE YOUR RIGHT HAND, PLEASE.

--OOO--

I HEREBY CERTIFY THAT THE TESTIMONY ADDUCED IN THE FOREGOING MATTER IS A TRUE RECORD OF SAID PROCEEDINGS.

S/EVA OEMICK 7-3-07

EVA OEMICK DATE
OFFICIAL COURT REPORTER

EXHIBIT H

Exhibit "A"

Reporter's Partial Transcript of Proceedings
Wednesday, January 11, 2007

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE: THE IMPANELMENT)
OF GRAND JURY PANELS 07-1 AND)
07-2)

BEFORE THE HONORABLE LARRY ALAN BURNS

UNITED STATES DISTRICT JUDGE

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, JANUARY 11, 2007

COURT REPORTER:

EVA OEMICK
OFFICIAL COURT REPORTER
UNITED STATES COURTHOUSE
940 FRONT STREET, STE. 2190
SAN DIEGO, CA 92101
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SAN DIEGO, CALIFORNIA-WEDNESDAY, JANUARY 11, 2007-9:30 A.M.

THE COURT: LADIES AND GENTLEMEN, YOU HAVE BEEN SELECTED TO SIT ON THE GRAND JURY. IF YOU'LL STAND AND RAISE YOUR RIGHT HAND, PLEASE.

MR. HAMRICK: DO YOU, AND EACH OF YOU, SOLEMNLY SWEAR OR AFFIRM THAT YOU SHALL DILIGENTLY INQUIRE INTO AND MAKE TRUE PRESENTMENT OR INDICTMENT OF ALL MATTERS AND THINGS AS SHALL BE GIVEN TO YOU IN CHARGE OR OTHERWISE COME TO YOUR KNOWLEDGE TOUCHING YOUR GRAND JURY SERVICE; TO KEEP SECRET THE COUNSEL OF THE UNITED STATES, YOUR FELLOWS AND YOURSELVES; NOT TO PRESENT OR INDICT ANY PERSON THROUGH HATRED, MALICE OR ILL WILL; NOR LEAVE ANY PERSON UNREPRESENTED OR UNINDICTED THROUGH FEAR, FAVOR, OR AFFECTION, NOR FOR ANY REWARD, OR HOPE OR PROMISE THEREOF; BUT IN ALL YOUR PRESENTMENTS AND INDICTMENTS TO PRESENT THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TO THE BEST OF YOUR SKILL AND UNDERSTANDING?

IF SO, ANSWER, "I DO."

(ALL GRAND JURORS ANSWER AFFIRMATIVELY)

THE COURT: ALL JURORS HAVE TAKEN THE OATH AND ANSWERED AFFIRMATIVELY.

IF YOU'LL HAVE A SEAT. WE ARE NEARLY COMPLETED WITH THIS PROCESS.

I AM OBLIGATED BY THE CONVENTION OF THE COURT AND THE LAW OF THE UNITED STATES TO GIVE YOU A FURTHER CHARGE REGARDING YOUR RESPONSIBILITY AS GRAND JURORS. THIS WILL

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APPLY NOT ONLY TO THOSE WHO HAVE BEEN SWORN, BUT THE REST OF YOU WHOSE NAMES HAVE NOT YET BEEN CALLED, YOU ARE GOING TO BE PUT IN RESERVE FOR US.

AND IF DISABILITIES OCCUR -- I DON'T MEAN IN A PHYSICAL SENSE, BUT PEOPLE MOVE OR SITUATIONS COME UP WHERE SOME OF THE FOLKS THAT HAVE BEEN SWORN IN TODAY ARE RELIEVED, YOU WILL BE CALLED AS REPLACEMENT GRAND JURORS. SO THESE INSTRUCTIONS APPLY TO ALL WHO ARE ASSEMBLED HERE TODAY.

NOW THAT YOU HAVE BEEN IMPANELED AND SWORN AS A GRAND JURY, IT'S THE COURT'S RESPONSIBILITY TO INSTRUCT YOU ON THE LAW WHICH GOVERNS YOUR ACTIONS AND YOUR DELIBERATIONS AS GRAND JURORS.

THE FRAMERS OF OUR FEDERAL CONSTITUTION DETERMINED AND DEEMED THE GRAND JURY SO IMPORTANT TO THE ADMINISTRATION OF JUSTICE THAT THEY INCLUDED A PROVISION FOR THE GRAND JURY IN OUR BILL OF RIGHTS.

AS I SAID BEFORE, THE 5TH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES, IN PART, THAT NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL OR OTHERWISE INFAMOUS CRIME WITHOUT ACTION BY THE GRAND JURY.

WHAT THAT MEANS IN A VERY REAL SENSE IS YOU'RE THE BUFFER BETWEEN THE GOVERNMENT'S POWER TO CHARGE SOMEONE WITH A CRIME AND THAT CASE GOING FORWARD OR NOT GOING FORWARD.

THE FUNCTION OF THE GRAND JURY, IN FEDERAL COURT AT LEAST, IS TO DETERMINE PROBABLE CAUSE. THAT'S THE SIMPLE

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FORMULATION THAT I MENTIONED TO A NUMBER OF YOU DURING THE JURY SELECTION PROCESS. PROBABLE CAUSE IS JUST AN ANALYSIS OF WHETHER A CRIME WAS COMMITTED AND THERE'S A REASONABLE BASIS TO BELIEVE THAT AND WHETHER A CERTAIN PERSON IS ASSOCIATED WITH THE COMMISSION OF THAT CRIME, COMMITTED IT OR HELPED COMMIT IT.

IF THE ANSWER IS YES, THEN AS GRAND JURORS YOUR FUNCTION IS TO FIND THAT THE PROBABLE CAUSE IS THERE, THAT THE CASE HAS BEEN SUBSTANTIATED, AND IT SHOULD MOVE FORWARD. IF CONSCIENTIOUSLY, AFTER LISTENING TO THE EVIDENCE, YOU SAY "NO, I CAN'T FORM A REASONABLE BELIEF EITHER THAT A CRIME WAS COMMITTED OR THAT THIS PERSON HAS ANYTHING TO DO WITH IT, THEN YOUR OBLIGATION, OF COURSE, WOULD BE TO DECLINE TO INDICT, TO TURN THE CASE AWAY AND NOT HAVE IT GO FORWARD.

A GRAND JURY CONSISTS OF 23 MEMBERS OF THE COMMUNITY DRAWN AT RANDOM. I'VE USED THE TERM "INFAMOUS CRIME." AN INFAMOUS CRIME, UNDER OUR LAW, REFERS TO A SERIOUS CRIME WHICH CAN BE PUNISHED BY IMPRISONMENT BY MORE THAN ONE YEAR. THE PROSECUTORS WILL PRESENT FELONY CASES TO THE GRAND JURY. MISDEMEANORS, UNDER FEDERAL LAW, THEY HAVE DISCRETION TO CHARGE ON THEIR OWN. AND THEY'RE NOT -- THOSE CHARGES -- MISDEMEANORS AREN'T ENTITLED TO PRESENTMENT BEFORE A GRAND JURY.

BUT ANY CASE THAT CARRIES A PENALTY OF A YEAR OR MORE MUST BE PRESENTED TO -- ACTUALLY, MORE THAN A YEAR. A

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YEAR AND A DAY OR LONGER MUST BE PRESENTED TO A GRAND JURY.

THE PURPOSE OF THE GRAND JURY, AS I MENTIONED, IS TO DETERMINE WHETHER THERE'S SUFFICIENT EVIDENCE TO JUSTIFY A FORMAL ACCUSATION AGAINST A PERSON.

IF LAW ENFORCEMENT OFFICIALS -- AND I DON'T MEAN THIS IN A DISPARAGING WAY. BUT IF LAW ENFORCEMENT OFFICIALS, INCLUDING AGENTS AS WELL AS THE FOLKS THAT STAFF THE U.S. ATTORNEY'S OFFICE, WERE NOT REQUIRED TO SUBMIT CHARGES TO AN IMPARTIAL GRAND JURY TO DETERMINE WHETHER THE EVIDENCE WAS SUFFICIENT, THEN OFFICIALS IN OUR COUNTRY WOULD BE FREE TO ARREST AND BRING ANYONE TO TRIAL NO MATTER HOW LITTLE EVIDENCE EXISTED TO SUPPORT THE CHARGE. WE DON'T WANT THAT. WE DON'T WANT THAT.

WE WANT THE BURDEN OF THE TRIAL TO BE JUSTIFIED BY SUBSTANTIAL EVIDENCE, EVIDENCE THAT CONVINCES YOU OF PROBABLE CAUSE TO BELIEVE THAT A CRIME PROBABLY OCCURRED AND THE PERSON IS PROBABLY RESPONSIBLE.

NOW, AGAIN, I MAKE THE DISTINCTION YOU DON'T HAVE TO VOTE ON ULTIMATE OUTCOMES. THAT'S NOT UP TO YOU. YOU CAN BE ASSURED THAT IN EACH CASE, YOU INDICT THE PERSON WHO WILL BE ENTITLED TO A FULL SET OF RIGHTS AND THAT THERE WILL BE A JURY TRIAL IF THE PERSON ELECTS ONE. THE JURY WILL HAVE TO PASS ON THE ACCUSATION ONCE AGAIN USING A MUCH HIGHER STANDARD OF PROOF, PROOF BEYOND A REASONABLE DOUBT.

AS MEMBERS OF THE GRAND JURY, YOU, IN A VERY REAL

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SENSE, STAND BETWEEN THE GOVERNMENT AND THE ACCUSED. IT'S YOUR DUTY TO SEE THAT INDICTMENTS ARE RETURNED ONLY AGAINST THOSE WHOM YOU FIND PROBABLE CAUSE TO BELIEVE ARE GUILTY AND TO SEE TO IT THAT THE INNOCENT ARE NOT COMPELLED TO GO TO TRIAL OR EVEN COMPELLED TO FACE AN ACCUSATION.

IF A MEMBER OF THE GRAND JURY IS RELATED BY BLOOD OR MARRIAGE OR KNOWS OR SOCIALIZES TO SUCH AN EXTENT AS TO FIND HIMSELF OR HERSELF IN A BIASED STATE OF MIND AS TO THE PERSON UNDER INVESTIGATION OR ALTERNATIVELY YOU SHOULD FIND YOURSELF BIASED FOR ANY REASON, THEN THAT PERSON SHOULD NOT PARTICIPATE IN THE INVESTIGATION UNDER QUESTION OR RETURN THE INDICTMENT.

ONE OF OUR GRAND JURORS, MS. GARFIELD, HAS RELATIVES THAT -- OBVIOUSLY, MS. GARFIELD, IF YOUR SON OR YOUR HUSBAND WAS EVER CALLED IN FRONT OF THE GRAND JURY, THAT WOULD BE A CASE WHERE YOU WOULD SAY, "THIS IS JUST TOO CLOSE. I'M GOING TO RECUSE MYSELF FROM THIS PARTICULAR CASE. NO ONE WOULD IMAGINE THAT I COULD BE ABSOLUTELY IMPARTIAL WHEN IT COMES TO MY OWN BLOOD RELATIVES."

SO THOSE ARE THE KINDS OF SITUATIONS THAT I REFER TO WHEN I TALK ABOUT EXCUSING YOURSELF FROM A PARTICULAR GRAND JURY DELIBERATION. IF THAT HAPPENS, YOU SHOULD INDICATE TO THE FOREPERSON OF THE GRAND JURY, WITHOUT GOING INTO DETAIL, FOR WHATEVER REASON, THAT YOU WANT TO BE EXCUSED FROM GRAND JURY DELIBERATIONS ON A PARTICULAR CASE OR CONSIDERATION OF A

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PARTICULAR MATTER IN WHICH YOU FEEL YOU'RE BIASED OR YOU MAY HAVE A CONFLICT.

THIS DOES NOT MEAN THAT IF YOU HAVE AN OPPORTUNITY, YOU SHOULD NOT PARTICIPATE IN AN INVESTIGATION. HOWEVER, IT DOES MEAN THAT IF YOU HAVE A FIXED STATE OF MIND BEFORE YOU HEAR EVIDENCE EITHER ON THE BASIS OF FRIENDSHIP OR BECAUSE YOU HATE SOMEBODY OR HAVE SIMILAR MOTIVATION, THEN YOU SHOULD STEP ASIDE AND NOT PARTICIPATE IN THAT PARTICULAR GRAND JURY INVESTIGATION AND IN VOTING ON THE PROPOSED INDICTMENT. THIS IS WHAT I MEANT WHEN I TALKED TO YOU ABOUT BEING FAIR-MINDED.

ALTHOUGH THE GRAND JURY HAS EXTENSIVE POWERS, THEY'RE LIMITED IN SOME IMPORTANT RESPECTS.

FIRST, THESE ARE THE LIMITATIONS ON YOUR SERVICE: YOU CAN ONLY INVESTIGATE CONDUCT THAT VIOLATES THE FEDERAL CRIMINAL LAWS. THAT'S YOUR CHARGE AS FEDERAL GRAND JURORS, TO LOOK AT VIOLATIONS OR SUSPECTED VIOLATIONS OF FEDERAL CRIMINAL LAW.

YOU ARE A FEDERAL GRAND JURY, AND CRIMINAL ACTIVITY WHICH VIOLATES STATE LAW, THE LAWS OF THE STATE OF CALIFORNIA, IS OUTSIDE OF YOUR INQUIRY. IT MAY HAPPEN AND FREQUENTLY DOES HAPPEN THAT SOME OF THE CONDUCT THAT'S UNDER INVESTIGATION BY THE FEDERAL GRAND JURY ALSO VIOLATES STATE LAW. AND THIS IS FINE. THAT'S PROPER. BUT THERE ALWAYS HAS TO BE SOME FEDERAL CONNECTION TO WHAT IS UNDER INVESTIGATION OR YOU HAVE NO JURISDICTION.

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THERE'S ALSO A GEOGRAPHIC LIMITATION ON THE SCOPE OF YOUR INQUIRIES AND THE EXERCISE OF YOUR POWERS. YOU MAY INQUIRE ONLY INTO FEDERAL OFFENSES COMMITTED IN OUR FEDERAL DISTRICT, WHICH INCLUDES SAN DIEGO AND IMPERIAL COUNTIES; THAT IS, THE SOUTHERN DISTRICT OF CALIFORNIA.

YOU MAY HAVE CASES THAT IMPLICATE ACTIVITIES IN OTHER AREAS, OTHER DISTRICTS, AND THERE MAY BE SOME EVIDENCE OF CRIMINAL ACTIVITY IN CONJUNCTION WITH WHAT GOES ON HERE THAT'S ALSO HAPPENING ELSEWHERE. THERE ALWAYS HAS TO BE A CONNECTION TO OUR DISTRICT.

THROUGHOUT THE UNITED STATES, WE HAVE 93 DISTRICTS NOW. THE STATES ARE CUT UP LIKE PIECES OF PIE, AND EACH DISTRICT IS SEPARATELY DENOMINATED, AND EACH DISTRICT HAS RESPONSIBILITY FOR THEIR OWN COUNTIES AND GEOGRAPHY. AND YOU, TOO, ARE BOUND BY THAT LIMITATION.

I'VE GONE OVER THIS WITH A COUPLE OF PEOPLE. YOU UNDERSTOOD FROM THE QUESTIONS AND ANSWERS THAT A COUPLE OF PEOPLE WERE EXCUSED, I THINK THREE IN THIS CASE, BECAUSE THEY COULD NOT ADHERE TO THE PRINCIPLE THAT I'M ABOUT TO TELL YOU.

BUT IT'S NOT FOR YOU TO JUDGE THE WISDOM OF THE CRIMINAL LAWS ENACTED BY CONGRESS; THAT IS, WHETHER OR NOT THERE SHOULD BE A FEDERAL LAW OR SHOULD NOT BE A FEDERAL LAW DESIGNATING CERTAIN ACTIVITY IS CRIMINAL IS NOT UP TO YOU. THAT'S A JUDGMENT THAT CONGRESS MAKES.

AND IF YOU DISAGREE WITH THAT JUDGMENT MADE BY

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CONGRESS, THEN YOUR OPTION IS NOT TO SAY "WELL, I'M GOING TO VOTE AGAINST INDICTING EVEN THOUGH I THINK THAT THE EVIDENCE IS SUFFICIENT" OR "I'M GOING TO VOTE IN FAVOR OF EVEN THOUGH THE EVIDENCE MAY BE INSUFFICIENT." INSTEAD, YOUR OBLIGATION IS TO CONTACT YOUR CONGRESSMAN OR ADVOCATE FOR A CHANGE IN THE LAWS, BUT NOT TO BRING YOUR PERSONAL DEFINITION OF WHAT THE LAW OUGHT TO BE AND TRY TO IMPOSE THAT THROUGH APPLYING IT IN A GRAND JURY SETTING.

FURTHERMORE, WHEN YOU'RE DECIDING WHETHER TO INDICT OR NOT TO INDICT, YOU SHOULDN'T BE CONCERNED WITH PUNISHMENT THAT ATTACHES TO THE CHARGE. I THINK I ALSO ALLUDED TO THIS IN THE CONVERSATION WITH ONE GENTLEMAN. JUDGES ALONE DETERMINE PUNISHMENT. WE TELL TRIAL JURIES IN CRIMINAL CASES THAT THEY'RE NOT TO BE CONCERNED WITH THE MATTER OF PUNISHMENT EITHER. YOUR OBLIGATION AT THE END OF THE DAY IS TO MAKE A BUSINESS-LIKE DECISION ON FACTS AND APPLY THOSE FACTS TO THE LAW AS IT'S EXPLAINED AND READ TO YOU.

THE CASES WHICH YOU'LL APPEAR WILL COME BEFORE YOU IN VARIOUS WAYS. FREQUENTLY, PEOPLE ARE ARRESTED DURING OR SHORTLY AFTER THE COMMISSION OF AN ALLEGED CRIME. AND THEN THEY'RE TAKEN BEFORE A MAGISTRATE JUDGE, WHO HOLDS A PRELIMINARY HEARING TO DETERMINE WHETHER INITIALLY THERE'S PROBABLE CAUSE TO BELIEVE A PERSON'S COMMITTED A CRIME.

ONCE THE MAGISTRATE JUDGE FINDS PROBABLE CAUSE, HE OR SHE WILL DIRECT THAT THE ACCUSED PERSON BE HELD FOR ACTION

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BY THE GRAND JURY. REMEMBER, UNDER OUR SYSTEM AND THE 5TH AMENDMENT, TRIALS OF SERIOUS AND INFAMOUS CRIMES CAN ONLY PROCEED WITH GRAND JURY ACTION. SO THE DETERMINATION OF THE MAGISTRATE JUDGE IS JUST TO HOLD THE PERSON UNTIL THE GRAND JURY CAN ACT. IT TAKES YOUR ACTION AS A GRAND JURY BEFORE THE CASE CAN FORMALLY GO FORWARD. IT'S AT THAT POINT THAT YOU'LL BE CALLED UPON TO CONSIDER WHETHER AN INDICTMENT SHOULD BE RETURNED IN A GIVEN CASE.

OTHER CASES MAY BE BROUGHT TO YOU BY THE UNITED STATES ATTORNEY OR AN ASSISTANT UNITED STATES ATTORNEY BEFORE AN ARREST IS MADE. BUT DURING THE COURSE OF AN INVESTIGATION OR AFTER AN INVESTIGATION HAS BEEN CONDUCTED, THERE'S TWO WAYS THAT CASES GENERALLY ENTER THE CRIMINAL JUSTICE PROCESS: THE REACTIVE OFFENSES WHERE, AS THE NAME IMPLIES, THE POLICE REACT TO A CRIME AND ARREST SOMEBODY. AND THOSE CASES WILL THEN BE SUBMITTED TO YOU AFTER MUCH OF THE FACTS ARE KNOWN. AND THEN THERE'S PROACTIVE CASES, CASES WHERE MAYBE THERE'S A SUSPICION OR A HUNCH OF WRONGDOING. THE FBI MAY BE CALLED UPON TO INVESTIGATE OR SOME OTHER FEDERAL AGENCY, AND THEY MAY NEED THE ASSISTANCE OF THE GRAND JURY IN FACILITATING THAT INVESTIGATION.

THE GRAND JURY HAS BROAD INVESTIGATORY POWERS. YOU HAVE THE POWER TO ISSUE SUBPOENAS, FOR EXAMPLE, FOR RECORDS OR FOR PEOPLE TO APPEAR. SOMETIMES IT HAPPENS THAT PEOPLE SAY "I DON'T HAVE TO TALK TO YOU" TO THE FBI, AND THEY REFUSE TO TALK

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TO THE AUTHORITIES. UNDER THOSE CIRCUMSTANCES, ON OCCASION, THE FBI MAY GO TO THE U.S. ATTORNEY AND SAY, "LOOK, YOU NEED TO FIND OUT WHAT HAPPENED HERE. SUMMON THIS PERSON IN FRONT OF THE GRAND JURY." SO IT MAY BE THAT YOU'RE CALLED UPON TO EVALUATE WHETHER A CRIME OCCURRED AND WHETHER THERE OUGHT TO BE AN INDICTMENT. YOU, IN A VERY REAL SENSE, ARE PART OF THE INVESTIGATION.

IT MAY HAPPEN THAT DURING THE COURSE OF AN INVESTIGATION INTO ONE CRIME, IT TURNS OUT THAT THERE IS EVIDENCE OF A DIFFERENT CRIME THAT SURFACES. YOU, AS GRAND JURORS, HAVE A RIGHT TO PURSUE THE NEW CRIME THAT YOU INVESTIGATE, EVEN CALLING NEW WITNESSES AND SEEKING OTHER DOCUMENTS OR PAPERS OR EVIDENCE BE SUBPOENAED.

NOW, IN THAT REGARD, THERE'S A CLOSE ASSOCIATION BETWEEN THE GRAND JURY AND THE U.S. ATTORNEY'S OFFICE AND THE INVESTIGATIVE AGENCIES OF THE FEDERAL GOVERNMENT. UNLIKE THE U.S. ATTORNEY'S OFFICE OR THOSE INVESTIGATIVE AGENCIES, THE GRAND JURY DOESN'T HAVE ANY POWER TO EMPLOY INVESTIGATORS OR TO EXPEND FEDERAL FUNDS FOR INVESTIGATIVE PURPOSES.

INSTEAD, YOU MUST GO BACK TO THE U.S. ATTORNEY AND ASK THAT THOSE THINGS BE DONE. YOU'LL WORK CLOSELY WITH THE U.S. ATTORNEY'S OFFICE IN YOUR INVESTIGATION OF CASES. IF ONE OR MORE GRAND JURORS WANT TO HEAR ADDITIONAL EVIDENCE ON A CASE OR THINK THAT SOME ASPECT OF THE CASE OUGHT TO BE PURSUED, YOU MAY MAKE THAT REQUEST TO THE U.S. ATTORNEY.

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IF THE U.S. ATTORNEY REFUSES TO ASSIST YOU OR IF YOU BELIEVE THAT THE U.S. ATTORNEY IS NOT ACTING IMPARTIALLY, THEN YOU CAN TAKE THE MATTER UP WITH ME. I'M THE ASSIGNED JURY JUDGE, AND I WILL BE THE LIAISON WITH THE GRAND JURIES.

YOU CAN USE YOUR POWER TO INVESTIGATE EVEN OVER THE ACTIVE OPPOSITION OF THE UNITED STATES ATTORNEY. IF THE MAJORITY OF YOU ON THE GRAND JURY THINK THAT A SUBJECT OUGHT TO BE PURSUED AND THE U.S. ATTORNEY THINKS NOT, THEN YOUR DECISION TRUMPS, AND YOU HAVE THE RIGHT TO HAVE THAT INVESTIGATION PURSUED IF YOU BELIEVE IT'S NECESSARY TO DO SO IN THE INTEREST OF JUSTICE.

I MENTION THESE THINGS TO YOU AS A THEORETICAL POSSIBILITY. THE TRUTH OF THE MATTER IS IN MY EXPERIENCE HERE IN THE OVER 20 YEARS IN THIS COURT, THAT KIND OF TENSION DOES NOT EXIST ON A REGULAR BASIS, THAT I CAN RECALL, BETWEEN THE U.S. ATTORNEY AND GRAND JURIES. THEY GENERALLY WORK TOGETHER. THE U.S. ATTORNEY IS GENERALLY DEFERENTIAL TO THE GRAND JURY AND WHAT THE GRAND JURY WANTS.

IT'S IMPORTANT TO KEEP IN MIND THAT YOU WILL AND DO HAVE AN INVESTIGATORY FUNCTION AND THAT THAT FUNCTION IS PARAMOUNT TO EVEN WHAT THE U.S. ATTORNEY MAY WANT YOU TO DO.

IF YOU, AS I SAID, BELIEVE THAT AN INVESTIGATION OUGHT TO GO INTO OTHER AREAS BOTH IN TERMS OF SUBJECT MATTER, BEING A FEDERAL CRIME, AND GEOGRAPHICALLY, THEN YOU AS A GROUP CAN MAKE THAT DETERMINATION AND DIRECT THE INVESTIGATION THAT

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WAY.

SINCE THE UNITED STATES ATTORNEY HAS THE DUTY OF PROSECUTING PERSONS CHARGED WITH THE COMMISSION OF FEDERAL CRIMES, SHE OR ONE OF HER ASSISTANTS -- BY THE WAY, THE U.S. ATTORNEY IN OUR DISTRICT IS MS. CAROL LAM -- SHE OR ONE OF HER ASSISTANTS WILL PRESENT THE MATTERS WHICH THE GOVERNMENT HAS DESIRES TO HAVE YOU CONSIDER. THE ATTORNEY WILL EDUCATE YOU ON THE LAW THAT APPLIES BY READING THE LAW TO YOU OR POINTING IT OUT, THE LAW THAT THE GOVERNMENT BELIEVES WAS VIOLATED. THE ATTORNEY WILL SUBPOENA FOR TESTIMONY BEFORE YOU SUCH WITNESSES AS THE LAWYER THINKS ARE IMPORTANT AND NECESSARY TO ESTABLISH PROBABLE CAUSE AND ALLOW YOU TO DO YOUR FUNCTION, AND ALSO ANY OTHER WITNESSES THAT YOU MAY REQUEST THE ATTORNEY TO CALL IN RELATION TO THE SUBJECT MATTER UNDER INVESTIGATION.

REMEMBER THAT THE DIFFERENCE BETWEEN THE GRAND JURY FUNCTION AND THAT OF THE TRIAL JURY IS THAT YOU ARE NOT PRESIDING IN A FULL-BLOWN TRIAL. IN MOST OF THE CASES THAT YOU APPEAR, THE LAWYER FOR THE GOVERNMENT IS NOT GOING TO BRING IN EVERYBODY THAT MIGHT BE BROUGHT IN AT THE TIME OF TRIAL; THAT IS, EVERYBODY THAT HAS SOME RELEVANT EVIDENCE TO OFFER. THEY'RE NOT GOING TO BRING IN EVERYONE WHO CONCEIVABLY COULD SAY SOMETHING THAT MIGHT BEAR ON THE OUTCOME. THEY'RE PROBABLY GOING TO BRING IN A LIMITED NUMBER OF WITNESSES JUST TO ESTABLISH PROBABLE CAUSE. OFTENTIMES, THEY PRESENT A SKELETON CASE. IT'S EFFICIENT. IT'S ALL THAT'S NECESSARY.

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IT SAVES TIME AND RESOURCES.

WHEN YOU ARE PRESENTED WITH A CASE, IT WILL TAKE 16 OF YOUR NUMBER OUT OF THE 23, 16 MEMBERS OF THE GRAND JURY OUT OF THE 23, TO CONSTITUTE A QUORUM. YOU CAN'T DO BUSINESS UNLESS THERE'S AT LEAST 16 MEMBERS OF THE GRAND JURY PRESENT FOR THE TRANSACTION OF ANY BUSINESS. IF FEWER THAN 16 GRAND JURORS ARE PRESENT EVEN FOR A MOMENT, THEN THE PROCEEDINGS OF THE GRAND JURY MUST STOP. YOU CAN NEVER OPERATE WITHOUT A QUORUM OF AT LEAST 16 MEMBERS PRESENT.

NOW, THE EVIDENCE THAT YOU WILL HEAR NORMALLY WILL CONSIST OF TESTIMONY OF WITNESSES AND WRITTEN DOCUMENTS. YOU MAY GET PHOTOGRAPHS. THE WITNESSES WILL APPEAR IN FRONT OF YOU SEPARATELY. WHEN A WITNESS FIRST APPEARS BEFORE YOU, THE GRAND JURY FOREPERSON WILL ADMINISTER AN OATH. THE PERSON MUST SWEAR OR AFFIRM TO TELL THE TRUTH. AND AFTER THAT'S BEEN ACCOMPLISHED, THE WITNESS WILL BE QUESTIONED.

ORDINARILY, THE U.S. ATTORNEY PRESIDING AT THE -- REPRESENTING THE U.S. GOVERNMENT AT THE GRAND JURY SESSION WILL ASK THE QUESTIONS FIRST. THEN THE FOREPERSON OF THE GRAND JURY MAY ASK QUESTIONS, AND OTHER MEMBERS OF THE GRAND JURY MAY ASK QUESTIONS, ALSO.

I USED TO APPEAR IN FRONT OF THE GRAND JURY. I'LL TELL YOU WHAT I WOULD DO IS FREQUENTLY I'D ASK THE QUESTIONS, AND THEN I'D SEND THE WITNESS OUT AND ASK THE GRAND JURORS IF THERE WERE ANY QUESTIONS THEY WANTED ME TO ASK. AND THE

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REASON I DID THAT IS THAT I HAD THE LEGAL TRAINING TO KNOW WHAT WAS RELEVANT AND WHAT MIGHT BE PREJUDICIAL TO THE DETERMINATION OF WHETHER THERE WAS PROBABLE CAUSE.

A LOT OF TIMES PEOPLE WILL SAY, "WELL, HAS THIS PERSON EVER DONE IT BEFORE?" AND WHILE THAT MAY BE A RELEVANT QUESTION, ON THE ISSUE OF PROBABLE CAUSE, IT HAS TO BE ASSESSED ON A CASE-BY-CASE BASIS. IN OTHER WORDS, THE EVIDENCE OF THIS OCCASION OF CRIME THAT'S ALLEGED MUST BE ADEQUATE WITHOUT REGARD TO WHAT THE PERSON HAS DONE IN THE PAST. I WOULDN'T WANT THAT QUESTION ANSWERED UNTIL AFTER THE GRAND JURY HAD MADE A DETERMINATION OF WHETHER THERE WAS ENOUGH EVIDENCE.

SO WHEN I APPEARED IN FRONT OF THE GRAND JURY, I'D TELL THEM "YOU'LL GET YOUR QUESTION ANSWERED, BUT I'D LIKE YOU TO VOTE ON THE INDICTMENT FIRST. I'D LIKE YOU TO DETERMINE WHETHER THERE'S ENOUGH EVIDENCE BASED ON WHAT'S BEEN PRESENTED, AND THEN WE'LL ANSWER IT." I DIDN'T WANT TO PREJUDICE THE GRAND JURY. THERE MAY BE SIMILAR CONCERNS THAT COME UP. NOW, THE PRACTICES VARY AMONG THE ASSISTANT U.S. ATTORNEYS THAT WILL APPEAR IN FRONT OF YOU.

ON OTHER OCCASIONS WHEN I DIDN'T THINK THERE WAS ANY RISK THAT MIGHT PREJUDICE THE PROCESS, I WOULD ALLOW THE GRAND JURY TO FOLLOW UP THEMSELVES AND ASK QUESTIONS. A LOT OF TIMES, THE FOLLOW-UPS ARE FACTUAL ON DETAILED MATTERS. THAT PRACTICE WILL VARY DEPENDING ON WHO IS REPRESENTING THE UNITED

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STATES AND PRESENTING THE CASE TO YOU. THE POINT IS YOU HAVE THE RIGHT TO ASK ADDITIONAL QUESTIONS OR TO ASK THAT THOSE QUESTIONS BE PUT TO THE WITNESS.

IN THE EVENT A WITNESS DOESN'T SPEAK OR UNDERSTAND ENGLISH, THEN ANOTHER PERSON WILL BE BROUGHT INTO THE ROOM. OBVIOUSLY, THAT WOULD BE AN INTERPRETER TO ALLOW YOU TO UNDERSTAND THE ANSWERS. WHEN WITNESSES DO APPEAR IN FRONT OF THE GRAND JURY, THEY SHOULD BE TREATED COURTEOUSLY. QUESTIONS SHOULD BE PUT TO THEM IN AN ORDERLY FASHION. THE QUESTIONS SHOULD NOT BE HOSTILE.

IF YOU HAVE ANY DOUBT WHETHER IT'S PROPER TO ASK A PARTICULAR QUESTION, THEN YOU CAN ASK THE U.S. ATTORNEY WHO'S ASSISTING IN THE INVESTIGATION FOR ADVICE ON THE MATTER. YOU ALONE AS GRAND JURORS DECIDE HOW MANY WITNESSES YOU WANT TO HEAR. WITNESSES CAN BE SUBPOENAED FROM ANYWHERE IN THE COUNTRY. YOU HAVE NATIONAL JURISDICTION.

HOWEVER, PERSONS SHOULD NOT ORDINARILY BE SUBJECTED TO DISRUPTION OF THEIR DAILY LIVES UNLESS THERE'S GOOD REASON. THEY SHOULDN'T BE HARASSED OR ANNOYED OR INCONVENIENCED. THAT'S NOT THE PURPOSE OF THE GRAND JURY HEARING, NOR SHOULD PUBLIC FUNDS BE EXPENDED TO BRING WITNESSES UNLESS YOU BELIEVE THAT THE WITNESSES CAN PROVIDE MEANINGFUL, RELEVANT EVIDENCE WHICH WILL ASSIST IN YOUR DETERMINATIONS AND YOUR INVESTIGATION.

ALL WITNESSES WHO ARE CALLED IN FRONT OF THE GRAND

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JURY HAVE CERTAIN RIGHTS. THESE INCLUDE, AMONG OTHERS, THE RIGHT TO REFUSE TO ANSWER QUESTIONS ON THE GROUNDS THAT THE ANSWER TO A QUESTION MIGHT INCRIMINATE THEM AND THE RIGHT TO KNOW THAT ANYTHING THEY SAY MIGHT BE USED AGAINST THEM.

THE U.S. ATTORNEYS ARE CHARGED WITH THE OBLIGATION, WHEN THEY'RE AWARE OF IT, OF ADVISING PEOPLE OF THIS RIGHT BEFORE THEY QUESTION THEM. BUT BEAR THAT IN MIND.

IF A WITNESS DOES EXERCISE THE RIGHT AGAINST SELF-INCRIMINATION, THEN THE GRAND JURY SHOULD NOT HOLD THAT AS ANY PREJUDICE OR BIAS AGAINST THAT WITNESS. IT CAN PLAY NO PART IN THE RETURN OF AN INDICTMENT AGAINST THE WITNESS. IN OTHER WORDS, THE MERE EXERCISE OF THE PRIVILEGE AGAINST SELF-INCRIMINATION, WHICH ALL OF US HAVE AS UNITED STATES RESIDENTS, SHOULD NOT FACTOR INTO YOUR DETERMINATION OF WHETHER THERE'S PROBABLE CAUSE TO GO FORWARD IN THIS CASE. YOU MUST RESPECT THAT DETERMINATION BY THE PERSON AND NOT USE IT AGAINST THEM.

IT'S AN UNCOMMON SITUATION THAT YOU'LL FACE WHEN SOMEBODY DOES CLAIM THE PRIVILEGE AGAINST SELF-INCRIMINATION. THAT'S BECAUSE USUALLY AT THE TIME A PERSON IS SUBPOENAED, IF THERE'S A PROSPECT THAT THEY'RE GOING TO CLAIM THE PRIVILEGE, THE U.S. ATTORNEY IS PUT ON NOTICE OF THAT BEFOREHAND EITHER BY THE PERSON HIMSELF OR HERSELF OR MAYBE A LAWYER REPRESENTING THE PERSON.

IN MY EXPERIENCE, MOST OF THE TIME THE U.S. ATTORNEY

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WILL NOT THEN CALL THE PERSON IN FRONT OF YOU BECAUSE IT WOULD BE TO NO EFFECT TO CALL THEM AND HAVE THEM ASSERT THEIR 5TH AMENDMENT PRIVILEGE. BUT IT SOMETIMES DOES COME UP. IT SOMETIMES HAPPENS. SOMETIMES THERE'S A QUESTION OF WHETHER THE PERSON HAS A BONA FIDE PRIVILEGE AGAINST SELF-INCRIMINATION. THAT'S A MATTER FOR THE COURT TO DETERMINE IN ANCILLARY PROCEEDINGS. OR THE U.S. ATTORNEY MAY BE UNAWARE OF A PERSON'S INCLINATION TO ASSERT THE 5TH. SO IT MAY COME UP IN FRONT OF YOU. IT DOESN'T ALWAYS COME UP.

AS I MENTIONED TO YOU IN MY PRELIMINARY REMARKS, WITNESSES ARE NOT PERMITTED TO HAVE A LAWYER WITH THEM IN THE GRAND JURY ROOM. THE LAW DOESN'T PERMIT A WITNESS SUMMONED BEFORE THE GRAND JURY TO BRING THE LAWYER WITH THEM, ALTHOUGH WITNESSES DO HAVE A RIGHT TO CONFER WITH THEIR LAWYERS DURING THE COURSE OF GRAND JURY INVESTIGATION PROVIDED THE CONFERENCE OCCURS OUTSIDE THE GRAND JURY ROOM.

YOU MAY FACE A SITUATION WHERE A WITNESS SAYS "I'D LIKE TO TALK TO MY LAWYER BEFORE I ANSWER THAT QUESTION," IN WHICH CASE THE PERSON WOULD LEAVE THE ROOM, CONSULT WITH THE LAWYER, AND THEN COME BACK INTO THE ROOM WHERE FURTHER ACTION WOULD TAKE PLACE.

APPEARANCES BEFORE A GRAND JURY SOMETIMES PRESENT COMPLEX LEGAL PROBLEMS THAT REQUIRE THE ASSISTANCE OF LAWYERS. YOU'RE NOT TO DRAW ANY ADVERSE INFERENCE IF A WITNESS DOES ASK TO LEAVE THE ROOM TO SPEAK TO HIS LAWYER OR HER LAWYER AND

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THEN LEAVES FOR THAT PURPOSE.

ORDINARILY, NEITHER THE ACCUSED OR ANY WITNESS ON THE ACCUSED'S BEHALF WILL TESTIFY IN THE GRAND JURY SESSION. BUT UPON THE REQUEST OF AN ACCUSED, PREFERABLY IN WRITING, YOU MAY AFFORD THE ACCUSED AN OPPORTUNITY TO APPEAR IN FRONT OF YOU.

AS I'VE SAID, THESE PROCEEDINGS TEND TO BE ONE-SIDED NECESSARILY. THE PROSECUTOR IS ASKING YOU TO RETURN AN INDICTMENT TO A CRIMINAL CHARGE, AND THEY'LL MUSTER THE EVIDENCE THAT THEY HAVE THAT THEY BELIEVE SUPPORTS PROBABLE CAUSE AND PRESENT THAT TO YOU. BECAUSE IT'S NOT A FULL-BLOWN TRIAL, YOU'RE LIKELY IN MOST CASES NOT TO HEAR THE OTHER SIDE OF THE STORY, IF THERE IS ANOTHER SIDE TO THE STORY. THERE'S NO PROVISION OF LAW THAT ALLOWS AN ACCUSED, FOR EXAMPLE, TO CONTEST THE MATTER IN FRONT OF THE GRAND JURY.

IT MAY HAPPEN, AS I SAID, THAT AN ACCUSED MAY ASK TO APPEAR IN FRONT OF YOU. BECAUSE THE APPEARANCE OF SOMEONE ACCUSED OF A CRIME MAY RAISE COMPLICATED LEGAL PROBLEMS, YOU SHOULD SEEK THE U.S. ATTORNEY'S ADVICE AND COUNSEL, IF NECESSARY, AND THAT OF THE COURT BEFORE ALLOWING THAT.

BEFORE ANY ACCUSED PERSON IS ALLOWED TO TESTIFY, THEY MUST BE ADVISED OF THEIR RIGHTS, AND YOU SHOULD BE COMPLETELY SATISFIED THAT THEY UNDERSTAND WHAT THEY'RE DOING.

YOU'RE NOT REQUIRED TO SUMMON WITNESSES WHICH AN ACCUSED PERSON MAY WANT YOU TO HAVE EXAMINED UNLESS PROBABLE

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CAUSE FOR AN INDICTMENT MAY BE EXPLAINED AWAY BY THE TESTIMONY OF THOSE WITNESSES.

NOW, AGAIN, THIS EMPHASIZES THE DIFFERENCE BETWEEN THE FUNCTION OF THE GRAND JURY AND THE TRIAL JURY. YOU'RE ALL ABOUT PROBABLE CAUSE. IF YOU THINK THAT THERE'S EVIDENCE OUT THERE THAT MIGHT CAUSE YOU TO SAY "WELL, I DON'T THINK PROBABLE CAUSE EXISTS," THEN IT'S INCUMBENT UPON YOU TO HEAR THAT EVIDENCE AS WELL. AS I TOLD YOU, IN MOST INSTANCES, THE U.S. ATTORNEYS ARE DUTY-BOUND TO PRESENT EVIDENCE THAT CUTS AGAINST WHAT THEY MAY BE ASKING YOU TO DO IF THEY'RE AWARE OF THAT EVIDENCE.

THE DETERMINATION OF WHETHER A WITNESS IS TELLING THE TRUTH IS SOMETHING FOR YOU TO DECIDE. NEITHER THE COURT NOR THE PROSECUTORS NOR ANY OFFICERS OF THE COURT MAY MAKE THAT DETERMINATION FOR YOU. IT'S THE EXCLUSIVE PROVINCE OF GRAND JURORS TO DETERMINE WHO IS CREDIBLE AND WHO MAY NOT BE.

FINALLY, LET ME TELL YOU THIS: THERE'S ANOTHER DIFFERENCE BETWEEN OUR GRAND JURY PROCEDURE HERE AND PROCEDURES YOU MAY BE FAMILIAR WITH HAVING SERVED ON STATE TRIAL JURIES OR FEDERAL TRIAL JURIES OR EVEN ON THE STATE GRAND JURY; HEARSAY TESTIMONY, THAT IS, TESTIMONY AS TO FACTS NOT PERSONALLY KNOWN BY THE WITNESS, BUT WHICH THE WITNESS HAS BEEN TOLD OR RELATED BY OTHER PERSONS MAY BE DEEMED BY YOU PERSUASIVE AND MAY PROVIDE A BASIS FOR RETURNING AN INDICTMENT AGAINST AN ACCUSED.

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WHAT I MEAN BY THAT IS IF IT'S A FULL-BLOWN TRIAL WHERE THE RULES OF EVIDENCE APPLY -- AND ALL OF US ARE FAMILIAR WITH THIS TERM "HEARSAY EVIDENCE." GENERALLY, IT FORBIDS SOMEBODY FROM REPEATING WHAT SOMEONE ELSE TOLD THEM OUTSIDE OF COURT. OH, THERE'S A MILLION EXCEPTIONS TO THE HEARSAY RULE, BUT THAT'S THE GIST OF THE RULE.

USUALLY, WE INSIST ON THE SPEAKER OF THE WORDS TO COME IN SO THAT WE CAN KNOW THE CONTEXT OF IT. THAT RULE DOESN'T APPLY IN THE GRAND JURY CONTEXT. BECAUSE IT'S A PRELIMINARY PROCEEDING, BECAUSE ULTIMATELY GUILT OR INNOCENCE IS NOT BEING DETERMINED, THE EVIDENTIARY STANDARDS ARE RELAXED. THE PROSECUTORS ARE ENTITLED TO PUT ON HEARSAY EVIDENCE.

HOW DOES THAT PLAY OUT IN REAL LIFE? WELL, YOU'RE GOING TO BE HEARING A LOT OF BORDER TYPE CASES. IT DOESN'T MAKE SENSE, IT'S NOT EFFICIENT, IT'S NOT COST-EFFECTIVE TO PULL ALL OF OUR BORDER GUARDS OFF THE BORDER TO COME UP AND TESTIFY. WHO IS LEFT GUARDING THE BORDER, THEN?

WHAT THEY'VE DONE IN THE BORDER CASES IN PARTICULAR IF THEY USUALLY HAVE A SUMMARY WITNESS; A WITNESS FROM, FOR EXAMPLE, BORDER PATROL OR CUSTOMS WHO WILL TALK TO THE PEOPLE OR READ THE REPORTS OF THE PEOPLE WHO ACTUALLY MADE THE ARREST. THAT PERSON WILL COME IN AND TESTIFY ABOUT WHAT HAPPENED. THE PERSON WON'T HAVE FIRST-HAND KNOWLEDGE, BUT THEY'LL BE RELIABLY INFORMED BY THE PERSON WITH FIRST-HAND

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KNOWLEDGE OF WHAT OCCURRED, AND THEY'LL BE THE WITNESS BEFORE THE GRAND JURY.

YOU SHOULD EXPECT AND COUNT ON THE FACT THAT YOU'RE GOING TO HEAR EVIDENCE IN THE FORM OF HEARSAY THAT WOULD NOT BE ADMISSIBLE IF THE CASE GOES FORWARD TO TRIAL, BUT IS ADMISSIBLE AT THE GRAND JURY STAGE.

AFTER YOU'VE HEARD ALL OF THE EVIDENCE THAT THE U.S. ATTORNEY INTENDS TO PRESENT OR THAT YOU WANT TO HEAR IN A PARTICULAR MATTER, YOU'RE THEN CHARGED WITH THE OBLIGATION OF DELIBERATING TO DETERMINE WHETHER THE ACCUSED PERSON OUGHT TO BE INDICTED. NO ONE OTHER THAN YOUR OWN MEMBERS, THE MEMBERS OF THE GRAND JURY, IS TO BE PRESENT IN THE GRAND JURY ROOM WHILE YOU'RE DELIBERATING.

WHAT THAT MEANS IS THE COURT REPORTER, THE ASSISTANT U.S. ATTORNEY, ANYONE ELSE, THE INTERPRETER WHO MAY HAVE BEEN PRESENT TO INTERPRET FOR A WITNESS, MUST GO OUT OF THE ROOM, AND THE PROCEEDING MUST GO FORWARD WITH ONLY GRAND JURORS PRESENT DURING THE DELIBERATION AND VOTING ON AN INDICTMENT.

YOU HEARD ME EXPLAIN EARLIER THAT AT VARIOUS TIMES DURING THE PRESENTATION OF MATTERS BEFORE YOU, OTHER PEOPLE MAY BE PRESENT IN THE GRAND JURY. THIS IS PERFECTLY ACCEPTABLE. THE RULE THAT I HAVE JUST READ TO YOU ABOUT YOUR PRESENCE ALONE IN THE GRAND JURY ROOM APPLIES ONLY DURING DELIBERATION AND VOTING ON INDICTMENTS.

TO RETURN AN INDICTMENT CHARGING SOMEONE WITH AN

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OFFENSE, IT'S NOT NECESSARY, AS I MENTIONED MANY TIMES, THAT YOU FIND PROOF BEYOND A REASONABLE DOUBT. THAT'S THE TRIAL STANDARD, NOT THE GRAND JURY STANDARD. YOUR TASK IS TO DETERMINE WHETHER THE GOVERNMENT'S EVIDENCE, AS PRESENTED TO YOU, IS SUFFICIENT TO CONCLUDE THAT THERE'S PROBABLE CAUSE TO BELIEVE THAT THE ACCUSED IS GUILTY OF THE PROPOSED OR CHARGED OFFENSE.

I EXPLAINED TO YOU WHAT THAT STANDARD MEANS. LET ME, AT THE RISK OF BORING YOU, TELL YOU ONE MORE TIME.

PROBABLE CAUSE MEANS THAT YOU HAVE AN HONESTLY HELD CONSCIENTIOUS BELIEF AND THAT THE BELIEF IS REASONABLE THAT A FEDERAL CRIME WAS COMMITTED AND THAT THE PERSON TO BE INDICTED WAS SOMEHOW ASSOCIATED WITH THE COMMISSION OF THAT CRIME. EITHER THEY COMMITTED IT THEMSELVES OR THEY HELPED SOMEONE COMMIT IT OR THEY WERE PART OF A CONSPIRACY, AN ILLEGAL AGREEMENT, TO COMMIT THAT CRIME.

TO PUT IT ANOTHER WAY, YOU SHOULD VOTE TO INDICT WHEN THE EVIDENCE PRESENTED TO YOU IS SUFFICIENTLY STRONG TO WARRANT A REASONABLE PERSON TO BELIEVE THAT THE ACCUSED IS PROBABLY GUILTY OF THE OFFENSE WHICH IS PROPOSED.

EACH GRAND JUROR HAS THE RIGHT TO EXPRESS VIEWS ON THE MATTER UNDER CONSIDERATION. AND ONLY AFTER ALL GRAND JURORS HAVE BEEN GIVEN A FULL OPPORTUNITY TO BE HEARD SHOULD YOU VOTE ON THE MATTER BEFORE YOU. YOU MAY DECIDE AFTER DELIBERATION AMONG YOURSELVES THAT YOU NEED MORE EVIDENCE,

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THAT MORE EVIDENCE SHOULD BE CONSIDERED BEFORE A VOTE IS TAKEN. IN SUCH CASES, THE U.S ATTORNEY OR THE ASSISTANT U.S. ATTORNEY CAN BE DIRECTED TO SUBPOENA ADDITIONAL DOCUMENTS OR WITNESSES FOR YOU TO CONSIDER IN ORDER TO MAKE YOUR DETERMINATION.

WHEN YOU'VE DECIDED TO VOTE, THE FOREPERSON SHOULD KEEP A RECORD OF THE VOTE. THAT RECORD SHOULD BE FILED WITH THE CLERK OF THE COURT. THE RECORD DOESN'T INCLUDE THE NAMES OF THE JURORS OR HOW THEY VOTED, BUT ONLY THE NUMBER OF VOTES FOR THE INDICTMENT. SO IT'S AN ANONYMOUS VOTE. YOU'LL KNOW AMONG YOURSELVES WHO VOTED WHICH WAY, BUT THAT INFORMATION DOES NOT GET CAPTURED OR RECORDED, JUST THE NUMBER OF PEOPLE VOTING FOR INDICTMENT.

IF 12 OR MORE MEMBERS OF THE GRAND JURY AFTER DELIBERATION BELIEVE THAT AN INDICTMENT IS WARRANTED, THEN YOU'LL REQUEST THE UNITED STATES ATTORNEY TO PREPARE A FORMAL WRITTEN INDICTMENT IF ONE'S NOT ALREADY BEEN PREPARED AND PRESENTED TO YOU. IN MY EXPERIENCE, MOST OF THE TIME THE U.S. ATTORNEY WILL SHOW UP WITH THE WITNESSES AND WILL HAVE THE PROPOSED INDICTMENT WITH THEM. SO YOU'LL HAVE THAT TO CONSIDER. YOU'LL KNOW EXACTLY WHAT THE PROPOSED CHARGES ARE.

THE INDICTMENT WILL SET FORTH THE DATE AND THE PLACE OF THE ALLEGED OFFENSE AND THE CIRCUMSTANCES THAT THE U.S. ATTORNEY BELIEVES MAKES THE CONDUCT CRIMINAL. IT WILL IDENTIFY THE CRIMINAL STATUTES THAT HAVE ALLEGEDLY BEEN

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VIOLATED.

THE FOREPERSON, UPON THE GRAND JURY VOTING TO RETURN THE INDICTMENT, WILL THEN ENDORSE OR SIGN THE INDICTMENT, WHAT'S CALLED A TRUE BILL OF INDICTMENT. THERE'S A SPACE PROVIDED BY THE WORD -- OR FOLLOWED BY THE WORD "FOREPERSON." THE FOREPERSON IS TO SIGN THE INDICTMENT IF THE GRAND JURY BELIEVES THAT THERE'S PROBABLE CAUSE. A TRUE BILL SIGNIFIES THAT 12 OR MORE GRAND JURORS HAVE AGREED THAT THE CASE OUGHT TO GO FORWARD WITH PROBABLE CAUSE TO BELIEVE THAT THE PERSON PROPOSED FOR THE CHARGE IS GUILTY OF THE CRIME.

IT'S THE DUTY OF THE FOREPERSON TO ENDORSE OR SIGN EVERY INDICTMENT VOTED ON BY AT LEAST 12 MEMBERS EVEN IF THE FOREPERSON HAS VOTED AGAINST RETURNING THE INDICTMENT. SO IF YOU'VE BEEN DESIGNATED A FOREPERSON OR AN ASSISTANT FOREPERSON, EVEN IF YOU VOTED THE OTHER WAY OR YOU'RE OUT-VOTED, IF THERE'S AT LEAST 12 WHO VOTED FOR THE INDICTMENT, THEN YOU MUST SIGN THE INDICTMENT.

IF YOU WERE THE 12 MEMBERS OF THE GRAND JURY WHO VOTED IN FAVOR OF THE INDICTMENT, THEN THE FOREPERSON WILL ENDORSE THE INDICTMENT WITH THESE WORDS: "NOT A TRUE BILL." THEY'LL RETURN IT TO THE COURT. THE COURT WILL IMPOUND IT.

THE INDICTMENTS WHICH HAVE BEEN ENDORSED AS A TRUE BILL ARE PRESENTED EITHER TO ONE OF OUR MAGISTRATE JUDGES OR TO A DISTRICT JUDGE IN OPEN COURT BY YOUR FOREPERSON AT THE CONCLUSION OF EACH SESSION OF THE GRAND JURY. THIS IS THE

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PROCEDURE THAT YOU HEARD ME ALLUDE TO. IN THE ABSENCE OF THE FOREPERSON, THE DEPUTY FOREPERSON SHALL PERFORM ALL THE FUNCTIONS AND DUTIES OF THE FOREPERSON.

LET ME EMPHASIZE AGAIN IT'S EXTREMELY IMPORTANT FOR THOSE OF YOU WHO ARE GRAND JURORS TO REALIZE THAT UNDER OUR CONSTITUTION, THE GRAND JURY IS AN INDEPENDENT BODY. IT'S INDEPENDENT OF THE UNITED STATES ATTORNEY. IT'S NOT AN ARM OR AN AGENT OF FEDERAL BUREAU OF INVESTIGATION OF THE DRUG ENFORCEMENT ADMINISTRATION, THE IRS, OR ANY OTHER GOVERNMENT AGENCY CHARGED WITH PROSECUTING THE CRIME.

I USED THE CHARACTERIZATION EARLIER THAT YOU STAND AS A BUFFER BETWEEN OUR GOVERNMENT'S ABILITY TO ACCUSE SOMEONE OF A CRIME AND THEN PUTTING THAT PERSON THROUGH THE BURDEN OF STANDING TRIAL. YOU ACT AS AN INDEPENDENT BODY OF CITIZENS.

IN RECENT YEARS, THERE HAS BEEN CRITICISM OF THE INSTITUTION OF THE GRAND JURY. THE CRITICISM GENERALLY IS THE GRAND JURY ACTS AS RUBBER STAMPS AND APPROVES PROSECUTIONS THAT ARE BROUGHT BY THE GOVERNMENT WITHOUT THOUGHT.

INTERESTINGLY ENOUGH, IN MY DISCUSSION WITH PROSPECTIVE GRAND JURORS, WE HAD ONE FELLOW WHO SAID, "YEAH, THAT'S THE WAY I THINK IT OUGHT TO BE." WELL, THAT'S NOT THE WAY IT IS. AS A PRACTICAL MATTER, YOU WILL WORK CLOSELY WITH GOVERNMENT LAWYERS. THE U.S. ATTORNEY AND THE ASSISTANT U.S. ATTORNEYS WILL PROVIDE YOU WITH IMPORTANT SERVICES AND HELP YOU FIND YOUR WAY WHEN YOU'RE CONFRONTED WITH COMPLEX LEGAL

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MATTERS. IT'S ENTIRELY PROPER THAT YOU SHOULD RECEIVE THE ASSISTANCE FROM THE GOVERNMENT LAWYERS.

BUT AT THE END OF THE DAY, THE DECISION ABOUT WHETHER A CASE GOES FORWARD AND AN INDICTMENT SHOULD BE RETURNED IS YOURS AND YOURS ALONE. IF PAST EXPERIENCE IS ANY INDICATION OF WHAT TO EXPECT IN THE FUTURE, THEN YOU CAN EXPECT THAT THE U.S. ATTORNEYS THAT WILL APPEAR IN FRONT OF YOU WILL BE CANDID, THEY'LL BE HONEST, THAT THEY'LL ACT IN GOOD FAITH IN ALL MATTERS PRESENTED TO YOU.

HOWEVER, AS I SAID, ULTIMATELY YOU HAVE TO DEPEND ON YOUR INDEPENDENT JUDGMENT IN MAKING THE DECISION THAT YOU ARE CHARGED WITH MAKING AS GRAND JURORS. YOU'RE NOT AN ARM OF THE U.S. ATTORNEY'S OFFICE. YOU'RE NOT AN ARM OF ANY GOVERNMENT AGENCY. THE GOVERNMENT'S LAWYERS ARE PROSECUTORS, AND YOU'RE NOT.

IF THE FACTS SUGGEST TO YOU THAT YOU SHOULD NOT INDICT, THEN YOU SHOULD NOT DO SO EVEN IN THE FACE OF OPPOSITION OR STATEMENTS OR ARGUMENTS FROM ONE OF THE ASSISTANT UNITED STATES ATTORNEYS. YOU SHOULD NOT SURRENDER AN HONESTLY OR CONSCIOUSLY HELD BELIEF WITHOUT THE WEIGHT OF THE EVIDENCE AND SIMPLY DEFER TO THE U.S. ATTORNEY. THAT'S YOUR DECISION TO MAKE.

JUST AS YOU MUST MAINTAIN YOUR INDEPENDENCE IN YOUR DEALINGS WITH GOVERNMENT LAWYERS, YOUR DEALINGS WITH THE COURT MUST BE ON A FORMAL BASIS, ALSO. IF YOU HAVE A QUESTION FOR

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THE COURT OR A DESIRE TO MAKE A PRESENTMENT OR A RETURN OF AN INDICTMENT TO THE COURT, THEN YOU MAY CONTACT ME THROUGH MY CLERK. YOU'LL BE ABLE TO ASSEMBLE IN THE COURTROOM OFTENTIMES FOR THESE PURPOSES.

LET ME TELL YOU ALSO THAT EACH GRAND JUROR IS DIRECTED TO REPORT IMMEDIATELY TO THE COURT ANY ATTEMPT BY ANYBODY UNDER ANY PRETENSE WHATSOEVER TO ADDRESS YOU OR CONTACT YOU FOR THE PURPOSE OF TRYING TO GAIN INFORMATION ABOUT WHAT'S GOING ON IN FRONT OF THE GRAND JURY. THAT SHOULD NOT HAPPEN. IF IT DOES HAPPEN, I SHOULD BE INFORMED OF THAT IMMEDIATELY BY ANY OF YOU, COLLECTIVELY OR INDIVIDUALLY. IF ANY PERSON CONTACTS YOU OR ATTEMPTS TO INFLUENCE YOU IN ANY MANNER IN CARRYING OUT YOUR DUTIES AS A GRAND JUROR, LET ME KNOW ABOUT IT.

LET ME TALK A LITTLE BIT MORE ABOUT THE OBLIGATION OF SECRECY, WHICH I'VE MENTIONED AND ALLUDED TO. AS I TOLD YOU BEFORE, THE HALLMARK OF THE GRAND JURY, PARTICULARLY OUR FEDERAL GRAND JURY, IS THAT IT OPERATES SECRETLY. IT OPERATES IN SECRECY, AND ITS PROCEEDINGS ARE ENTIRELY SECRET.

YOUR PROCEEDINGS AS GRAND JURORS ARE ALWAYS SECRET, AND THEY MUST REMAIN SECRET PERMANENTLY UNLESS AND UNTIL THE COURT DETERMINES OTHERWISE. YOU CAN'T RELATE TO YOUR FAMILY, THE NEWS MEDIA, TELEVISION REPORTERS, OR TO ANYONE WHAT HAPPENED IN FRONT OF THE GRAND JURY. IN FACT, TO DO SO IS TO COMMIT A CRIMINAL OFFENSE. YOU COULD BE HELD CRIMINALLY

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LIABLE FOR REVEALING WHAT OCCURRED IN FRONT OF THE GRAND JURY.

THERE ARE SEVERAL IMPORTANT REASONS WHY WE DEMAND SECRECY IN THE INSTITUTION OF THE GRAND JURY. FIRST -- AND I MENTIONED THIS, AND THIS IS OBVIOUS -- THE PREMATURE DISCLOSURE OF INFORMATION THAT THE GRAND JURY IS ACTING ON COULD VERY WELL FRUSTRATE THE ENDS OF JUSTICE IN PARTICULAR CASES. IT MIGHT GIVE AN OPPORTUNITY FOR SOMEONE WHO'S ACCUSED OF A CRIME TO ESCAPE OR BECOME A FUGITIVE OR TO DESTROY EVIDENCE THAT MIGHT OTHERWISE BE UNCOVERED LATER ON. YOU DON'T WANT TO DO THAT.

IN THE COURSE OF AN INVESTIGATION, IT'S ABSOLUTELY IMPERATIVE THAT THE INVESTIGATION AND THE FACTS OF THE INVESTIGATION REMAIN SECRET, AND YOU SHOULD KEEP THAT FOREMOST IN YOUR MIND. ALSO, IF THE TESTIMONY OF A WITNESS IS DISCLOSED, THE WITNESS MAY BE SUBJECT TO INTIMIDATION OR SOMETIMES RETALIATION OR BODILY INJURY BEFORE THE WITNESS IS ABLE TO TESTIFY. IT IS SOMETHING THAT THE LAW ENFORCEMENT -- IT'S SOMETIMES THE CASE THAT LAW ENFORCEMENT WILL TELL A WITNESS WHO IS COOPERATING WITH AN INVESTIGATION THAT THEIR SECRECY IS GUARANTEED. IT SOMETIMES TAKES THAT KIND OF ASSURANCE FROM THE POLICE OR LAW ENFORCEMENT AGENTS TO GET A WITNESS TO TELL WHAT THEY KNOW. AND THAT GUARANTEE CAN ONLY BE SECURED IF YOU MAINTAIN THE OBLIGATION OF SECRECY.

THE GRAND JURY IS FORBIDDEN BY LAW FROM DISCLOSING ANY INFORMATION ABOUT THE GRAND JURY PROCESS WHATSOEVER. IT'S

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ON THE BASIS SOMETIMES OF REPRESENTATIONS LIKE THAT RELUCTANT WITNESSES DO COME FORWARD. AGAIN, IT UNDERSCORES THE IMPORTANCE OF SECRECY.

AS I'VE ALSO MENTIONED, THE REQUIREMENT OF SECRECY PROTECTS INNOCENT PEOPLE WHO MAY HAVE COME UNDER INVESTIGATION, BUT WHO ARE CLEARED BY THE ACTIONS OF THE GRAND JURY. IT'S A TERRIBLE THING TO BE IMPROPERLY ACCUSED OF A CRIME. IT'S LIKE A SCARLET LETTER THAT PEOPLE SOMETIMES WEAR FOREVER. IT'S WORSE IF THE CRIME OR THE ACCUSATION NEVER BECOMES FORMAL. JUST THE IDEA THAT SOMEONE IS UNDER INVESTIGATION CAN HAVE DISASTROUS CONSEQUENCES FOR THAT PERSON OR HIS OR HER BUSINESS OR HIS OR HER FAMILY. THIS IS ANOTHER IMPORTANT REASON WHY THE GRAND JURY PROCEEDINGS MUST REMAIN SECRET.

IN THE EYES OF SOME PEOPLE, INVESTIGATION BY THE GRAND JURY ALONE CARRIES WITH IT THE STIGMA OR SUGGESTION OF GUILT. SO GREAT INJURY CAN BE DONE TO A PERSON'S GOOD NAME EVEN THOUGH ULTIMATELY YOU DECIDE THAT THERE'S NO EVIDENCE SUPPORTING AN INDICTMENT OF THE PERSON.

TO ENSURE THE SECRECY OF THE GRAND JURY PROCEEDINGS, THE LAW PROVIDES THAT ONLY AUTHORIZED PEOPLE MAY BE IN THE GRAND JURY ROOM WHILE EVIDENCE IS BEING PRESENTED. AS I'VE MENTIONED TO YOU NOW SEVERAL TIMES, THE ONLY PEOPLE WHO MAY BE PRESENT DURING THE FUNCTIONING OF THE GRAND JURY ARE THE GRAND JURORS THEMSELVES, THE UNITED STATES ATTORNEY OR AN ASSISTANT

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WHO'S PRESENTING THE CASE, A WITNESS WHO IS THEN UNDER EXAMINATION, A COURT REPORTER, AND AN INTERPRETER, IF NECESSARY. ALL THE OTHERS EXCEPT THE GRAND JURORS GO OUT DURING THE DELIBERATION AND VOTING.

YOU MAY DISCLOSE TO THE U.S. ATTORNEY WHO IS ASSISTING THE GRAND JURY CERTAIN INFORMATION. AS I SAID, IF YOU HAVE QUESTIONS, IF GRAND JURORS HAVE QUESTIONS THAT THEY WANT ANSWERED, OBVIOUSLY THAT INFORMATION IS TO BE CONVEYED TO THE U.S. ATTORNEY TO GET THE QUESTIONS ANSWERED.

BUT YOU SHOULD NOT DISCLOSE THE CONTEXT OF YOUR DELIBERATIONS OR THE VOTE OF ANY PARTICULAR GRAND JUROR TO ANYONE, EVEN THE GOVERNMENT LAWYERS, ONCE THE VOTE HAS BEEN DONE. THAT'S ONLY THE BUSINESS OF THE GRAND JURY. IN OTHER WORDS, YOU'RE NOT TO INFORM THE GOVERNMENT LAWYER WHO VOTED ONE WAY ON THE INDICTMENT AND WHO VOTED THE OTHER WAY.

LET ME CONCLUDE NOW -- I APPRECIATE YOUR PATIENCE, AND IT'S BEEN A LONG SESSION THIS MORNING -- BY SAYING THAT THE IMPORTANCE OF THE SERVICE YOU PERFORM IS DEMONSTRATED BY THE VERY IMPORTANT AND COMPREHENSIVE OATH WHICH YOU TOOK A SHORT WHILE AGO. IT'S AN OATH THAT IS ROOTED IN OUR HISTORY AS A COUNTRY. THOUSANDS OF PEOPLE BEFORE YOU HAVE TAKEN A SIMILAR OATH. AND AS GOOD CITIZENS, YOU SHOULD BE PROUD TO HAVE BEEN SELECTED TO ASSIST IN THE ADMINISTRATION OF JUSTICE.

IT HAS BEEN MY PLEASURE TO MEET YOU. I WOULD BE HAPPY TO SEE YOU IN THE FUTURE IF THE NEED ARISES. AT THIS

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POINT, THE U.S. ATTORNEY, MR. ROBINSON, WILL ASSIST YOU IN FURTHER ORGANIZATION. SO THIS PART OF THE ADMINISTRATION OF YOUR RESPONSIBILITY AS GRAND JURORS INVOLVING THE COURT IS OVER.

IT MIGHT BE APPROPRIATE TO TAKE A BREAK BEFORE WE GO ON TO THE NEXT PROCEEDING. I'VE HELD THESE FOLKS FOR A LONG TIME.

LADIES AND GENTLEMEN, MY GREAT PLEASURE TO MEET ALL OF YOU. GOOD LUCK WITH YOUR GRAND JURY SERVICE. I THINK YOU'LL FIND IT REWARDING AND INTERESTING AND COMPELLING.

--OOO--

I HEREBY CERTIFY THAT THE TESTIMONY ADDUCED IN THE FOREGOING MATTER IS A TRUE RECORD OF SAID PROCEEDINGS.

____

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Exhibit "B"

PROSPECTIVE JUROR: MY NAME IS [redacted]. I LIVE IN SAN DIEGO IN THE MISSION HILLS AREA. I'M RETIRED. I WAS A CLINICAL SOCIAL WORKER. I'M SINGLE. NO CHILDREN. I'VE BEEN CALLED FOR JURY SERVICE A NUMBER OF TIMES, BUT I'VE NEVER ACTUALLY BEEN SELECTED AS A JUROR. CAN I BE FAIR? I'LL TRY. BECAUSE OF THE NATURE OF THE WORK THAT I DID, I HAVE SOME FAIRLY STRONG OPINIONS ABOUT SOME OF THE PEOPLE WHO COME INTO THE LEGAL SYSTEM. BUT I WOULD TRY TO WORK WITH THAT.

THE COURT: WE'RE ALL PRODUCTS OF OUR EXPERIENCE. WE'RE NOT GOING TO TRY TO DISABUSE YOU OF EXPERIENCES OR JUDGMENTS THAT YOU HAVE. WHAT WE ASK IS THAT YOU NOT ALLOW THOSE TO CONTROL INVARIABLY THE OUTCOME OF THE CASES COMING IN FRONT OF YOU; THAT YOU LOOK AT THE CASES FRESH, YOU EVALUATE THE CIRCUMSTANCES, LISTEN TO THE WITNESS TESTIMONY, AND THEN MAKE AN INDEPENDENT JUDGMENT.

DO YOU THINK YOU CAN DO THAT?

PROSPECTIVE JUROR: I'LL DO MY BEST.

THE COURT: IS THERE A CERTAIN CATEGORY OF CASE THAT YOU THINK MIGHT BE TROUBLESOME FOR YOU TO SIT ON THAT YOU'D BE INSTINCTIVELY TILTING ONE WAY IN FAVOR OF INDICTMENT OR THE OTHER WAY AGAINST INDICTING JUST BECAUSE OF THE NATURE OF THE CASE?

PROSPECTIVE JUROR: WELL, I HAVE SOME FAIRLY STRONG FEELINGS REGARDING DRUG CASES. I DO NOT BELIEVE THAT ANY DRUGS SHOULD BE CONSIDERED ILLEGAL, AND I THINK WE'RE SPENDING A LOT OF TIME AND ENERGY PERSECUTING AND PROSECUTING CASES WHERE RESOURCES SHOULD BE DIRECTED IN OTHER AREAS.

I ALSO HAVE STRONG FEELINGS ABOUT IMMIGRATION CASES. AGAIN, I THINK WE'RE SPENDING A LOT OF TIME PERSECUTING PEOPLE THAT WE SHOULD NOT BE.

THE COURT: WELL, LET ME TELL YOU, YOU'VE HIT ON THE TWO TYPES OF CASES THAT ARE REALLY KIND OF THE STAPLE OF THE WORK WE DO HERE IN THE SOUTHERN DISTRICT OF CALIFORNIA. AS I MENTIONED IN MY INITIAL REMARKS, OUR PROXIMITY TO THE BORDER KIND OF MAKES US A FUNNEL FOR BOTH DRUG CASES AND IMMIGRATION CASES. YOU'RE GOING TO BE HEARING THOSE CASES I CAN TELL YOU FOR SURE. JUST AS DAY FOLLOWS NIGHT, YOU'RE HEAR CASES LIKE THAT.

NOW, THE QUESTION IS CAN YOU FAIRLY EVALUATE THOSE CASES? JUST AS THE DEFENDANT ULTIMATELY IS ENTITLED TO A FAIR TRIAL AND THE PERSON THAT'S ACCUSED IS ENTITLED TO A FAIR

APPRAISAL OF THE EVIDENCE OF THE CASE THAT'S IN FRONT OF YOU, SO, TOO, IS THE UNITED STATES ENTITLED TO A FAIR JUDGMENT. IF THERE'S PROBABLE CAUSE, THEN THE CASE SHOULD GO FORWARD. I WOULDN'T WANT YOU TO SAY, "WELL, YEAH, THERE'S PROBABLE CAUSE. BUT I STILL DON'T LIKE WHAT OUR GOVERNMENT IS DOING. I DISAGREE WITH THESE LAWS, SO I'M NOT GOING TO VOTE FOR IT TO GO FORWARD." IF THAT'S YOUR FRAME OF MIND, THEN PROBABLY YOU SHOULDN'T SERVE. ONLY YOU CAN TELL ME THAT.

PROSPECTIVE JUROR: WELL, I THINK I MAY FALL IN THAT CATEGORY.

THE COURT: IN THE LATTER CATEGORY?

PROSPECTIVE JUROR: YES.

THE COURT: WHERE IT WOULD BE DIFFICULT FOR YOU TO SUPPORT A CHARGE EVEN IF YOU THOUGHT THE EVIDENCE WARRANTED IT?

PROSPECTIVE JUROR: YES.

THE COURT: I'M GOING TO EXCUSE YOU, THEN. I APPRECIATE YOUR HONEST ANSWERS.

PROSPECTIVE JUROR: MAY NAME IS [redacted]. I LIVE IN SAN DIEGO. I'M A REAL ESTATE AGENT. NOT MARRIED. NO KIDS. HAVE NOT SERVED. AND AS FAR AS BEING FAIR, IT KIND OF DEPENDS UPON WHAT THE CASE IS ABOUT BECAUSE THERE IS A DISPARITY BETWEEN STATE AND FEDERAL LAW.

THE COURT: IN WHAT REGARD?

PROSPECTIVE JUROR: SPECIFICALLY, MEDICAL MARIJUANA.

THE COURT: WELL, THOSE THINGS -- THE CONSEQUENCES OF YOUR DETERMINATION SHOULDN'T CONCERN YOU IN THE SENSE THAT PENALTIES OR PUNISHMENT, THINGS LIKE THAT -- WE TELL TRIAL JURORS, OF COURSE, THAT THEY CANNOT CONSIDER THE PUNISHMENT OR

THE CONSEQUENCE THAT CONGRESS HAS SET FOR THESE THINGS. WE'D ASK YOU TO ALSO ABIDE BY THAT. WE WANT YOU TO MAKE A BUSINESS-LIKE DECISION AND LOOK AT THE FACTS AND MAKE A DETERMINATION OF WHETHER THERE WAS A PROBABLE CAUSE.

COULD YOU DO THAT? COULD YOU PUT ASIDE STRONG PERSONAL FEELINGS YOU MAY HAVE?

PROSPECTIVE JUROR: IT DEPENDS. I HAVE A VERY STRONG OPINION ON IT. WE LIVE IN THE STATE OF CALIFORNIA, NOT FEDERAL CALIFORNIA. THAT'S HOW I FEEL ABOUT IT VERY STRONGLY.

THE COURT: WELL, I DON'T KNOW HOW OFTEN MEDICAL MARIJUANA USE CASES COME UP HERE. I DON'T HAVE A GOOD FEEL FOR THAT. MY INSTINCT IS THEY PROBABLY DON'T ARISE VERY OFTEN. BUT I SUPPOSE ONE OF THE SOLUTIONS WOULD BE IN A CASE IMPLICATING MEDICAL USE OF MARIJUANA, YOU COULD RECUSE YOURSELF FROM THAT CASE.

ARE YOU WILLING TO DO THAT?

PROSPECTIVE JUROR: SURE.

THE COURT: ALL OTHER CATEGORIES OF CASES YOU COULD GIVE A FAIR, CONSCIENTIOUS JUDGMENT ON?

PROSPECTIVE JUROR: FOR THE MOST PART, BUT I ALSO FEEL THAT DRUGS SHOULD BE LEGAL.

THE COURT: OUR LAWS ARE DIFFERENT FROM THAT. AND AS YOU HEARD ME EXPLAIN TO [redacted], A LOT OF THE CASES THAT COME THROUGH IN OUR COURT ARE DRUG CASES. YOU'LL BE CALLED UPON TO EVALUATE THOSE CASES OBJECTIVELY AND THEN MAKE

THE TWO DETERMINATIONS THAT I STARTED OFF EXPLAINING TO [redacted] "DO I HAVE A REASONABLE BELIEF THAT A CRIME WAS COMMITTED? WHETHER I AGREE WITH WHETHER IT OUGHT TO BE A CRIME OR NOT, DO I BELIEVE THAT A CRIME WAS COMMITTED AND THAT THE PERSON THAT THE GOVERNMENT IS ASKING ME TO INDICT WAS SOMEHOW INVOLVED IN THIS CRIME, EITHER COMMITTED IT OR HELPED WITH IT?"

COULD YOU DO THAT IF YOU SIT AS A GRAND JUROR?

PROSPECTIVE JUROR: THE LAST JURY I WAS ASKED TO SIT ON, I GOT EXCUSED BECAUSE OF THAT REASON.

THE COURT: YOU SAID YOU COULDN'T DO IT? YOUR SENTIMENTS ARE SO STRONG THAT THEY WOULD IMPAIR YOUR OBJECTIVITY ABOUT DRUG CASES?

PROSPECTIVE JUROR: I THINK RAPISTS AND MURDERERS OUGHT TO GO TO JAIL, NOT PEOPLE USING DRUGS.

THE COURT: I THINK RAPISTS AND MURDERERS OUGHT TO GO TO JAIL, TOO. IT'S NOT FOR ME AS A JUDGE TO SAY WHAT THE LAW IS. WE ELECT LEGISLATORS TO DO THAT. WE'RE SORT OF AT THE END OF THE PIPE ON THAT. WE'RE CHARGED WITH ENFORCING THE LAWS THAT CONGRESS GIVES US.

I CAN TELL YOU SOMETIMES I DON'T AGREE WITH SOME OF THE LEGAL DECISIONS THAT ARE INDICATED THAT I HAVE TO MAKE. BUT MY ALTERNATIVE IS TO VOTE FOR SOMEONE DIFFERENT, VOTE FOR SOMEONE THAT SUPPORTS THE POLICIES I SUPPORT AND GET THE LAW CHANGED. IT'S NOT FOR ME TO SAY, "WELL, I DON'T LIKE IT. SO

I'M NOT GOING TO FOLLOW IT HERE."

YOU'D HAVE A SIMILAR OBLIGATION AS A GRAND JUROR EVEN THOUGH YOU MIGHT HAVE TO GRIT YOUR TEETH ON SOME CASES. PHILOSOPHICALLY, IF YOU WERE A MEMBER OF CONGRESS, YOU'D VOTE AGAINST, FOR EXAMPLE, CRIMINALIZING MARIJUANA. I DON'T KNOW IF THAT'S IT, BUT YOU'D VOTE AGAINST CRIMINALIZING SOME DRUGS.

THAT'S NOT WHAT YOUR PREROGATIVE IS HERE. YOUR PREROGATIVE INSTEAD IS TO ACT LIKE A JUDGE AND TO SAY, "ALL RIGHT. THIS IS WHAT I'VE GOT TO DEAL WITH OBJECTIVELY. DOES IT SEEM TO ME THAT A CRIME WAS COMMITTED? YES. DOES IT SEEM TO ME THAT THIS PERSON'S INVOLVED? IT DOES." AND THEN YOUR OBLIGATION, IF YOU FIND THOSE THINGS TO BE TRUE, WOULD BE TO VOTE IN FAVOR OF THE CASE GOING FORWARD.

I CAN UNDERSTAND IF YOU TELL ME "LOOK, I GET ALL THAT, BUT I JUST CAN'T DO IT OR I WOULDN'T DO IT." I DON'T KNOW WHAT YOUR FRAME OF MIND IS. YOU HAVE TO TELL ME ABOUT THAT.

PROSPECTIVE JUROR: I'M NOT COMFORTABLE WITH IT.

THE COURT: DO YOU THINK YOU'D BE INCLINED TO LET PEOPLE GO ON DRUG CASES EVEN THOUGH YOU WERE CONVINCED THERE WAS PROBABLE CAUSE THEY COMMITTED A DRUG OFFENSE?

PROSPECTIVE JUROR: IT WOULD DEPEND UPON THE CASE.

THE COURT: IS THERE A CHANCE THAT YOU WOULD DO THAT?

PROSPECTIVE JUROR: YES.

THE COURT: I APPRECIATE YOUR ANSWERS. I'LL EXCUSE YOU AT THIS TIME.

PROSPECTIVE JUROR: I'M [redacted]. I LIVE IN ENCINITAS. I WORK FOR AN INSURANCE COMPANY HERE IN SAN DIEGO. I'M MARRIED. MY WIFE IS A P.E. TEACHER AT A MIDDLE SCHOOL. I HAVE TWO KIDS AGE 14 AND 16. I'VE BEEN A JUROR BEFORE PROBABLY TEN YEARS AGO ON KIND OF A LOW-LEVEL CRIMINAL CASE. AND IN THE NAME OF FULL DISCLOSURE, I'D PROBABLY SUGGEST I'D BE THE FLIPSIDE OF SOME OF THE INDIVIDUALS WHO HAVE CONVEYED THEIR CONCERNS PREVIOUSLY. I HAVE A STRONG BIAS FOR THE U.S. ATTORNEY, WHATEVER CASES THEY MIGHT BRING. I DON'T THINK THEY'RE HERE TO WASTE OUR TIME, THE COURT'S TIME, THEIR OWN TIME. I APPRECIATE THE EVIDENTIARY STANDARDS, I GUESS, MORE OR LESS, AS A LAYPERSON WOULD; THAT THEY ARE CALLED UPON IN ORDER TO BRING THESE CASES OR SEEK AN INDICTMENT.

AND THE GATEKEEPER ROLE THAT I GUESS WE'RE BEING ASKED TO PLAY IS ONE THAT I'D HAVE A DIFFICULT TIME, IN ALL HONESTY. I'M PROBABLY SUGGESTING THAT THE U.S. ATTORNEY'S CASE WOULD BE ONE THAT I WOULD BE WILLING TO STAND IN FRONT

OF; IN OTHER WORDS, PREVENT FROM GOING TO A JURY.

THE COURT: IT SOMETIMES HAPPENS THAT AT THE TIME THE CASE IS INITIALLY PRESENTED TO THE U.S. ATTORNEY'S OFFICE, THINGS APPEAR DIFFERENTLY THAN 10 DAYS LATER, 20 DAYS LATER WHEN IT'S PRESENTED TO A GRAND JURY. THAT'S WHY THIS GATEKEEPER ROLE IS VERY, VERY IMPORTANT.

YOU'RE NOT PART OF THE PROSECUTING ARM. YOU'RE INTENDED TO BE A BUFFER INDEPENDENT OF THE U.S. ATTORNEY'S OFFICE. AND THE REAL ROLE OF THE GRAND JURY IS TO MAKE SURE THAT UNSUBSTANTIATED CHARGES DON'T GO FORWARD.

YOU'VE HEARD MY GENERAL COMMENTS. YOU HAVE AN APPRECIATION ABOUT HOW AN UNSUBSTANTIATED CHARGE COULD CAUSE PROBLEMS FOR SOMEONE EVEN IF THEY'RE ULTIMATELY ACQUITTED.

YOU APPRECIATE THAT; RIGHT?

PROSPECTIVE JUROR: I THINK I COULD APPRECIATE THAT, YES.

THE COURT: AND SO WE'RE -- LOOK, I'LL BE HONEST WITH YOU. THE GREAT MAJORITY OF THE CHARGES THAT THE GRAND JURY PASSES ON THAT ARE PRESENTED BY THE U.S. ATTORNEY'S OFFICE DO GO FORWARD. MOST OF THE TIME, THE GRAND JURY PUTS ITS SEAL OF APPROVAL ON THE INITIAL DECISION MADE BY THE U.S. ATTORNEY.

OBVIOUSLY, I WOULD SCREEN SOMEBODY OUT WHO SAYS, "I DON'T CARE ABOUT THE EVIDENCE. I'M NOT GOING TO PAY ATTENTION TO THE EVIDENCE. IF THE U.S. ATTORNEY SAYS IT'S GOOD, I'M

GOING TO GO WITH THAT." IT DIDN'T SOUND LIKE THAT'S WHAT YOU WERE SAYING. YOU WERE SAYING YOU GIVE A PRESUMPTION OF GOOD FAITH TO THE U.S. ATTORNEY AND ASSUME, QUITE LOGICALLY, THAT THEY'RE NOT ABOUT THE BUSINESS OF TRYING TO INDICT INNOCENT PEOPLE OR PEOPLE THAT THEY BELIEVE TO BE INNOCENT OR THE EVIDENCE DOESN'T SUBSTANTIATE THE CHARGES AGAINST. THAT'S WELL AND GOOD.

YOU MUST UNDERSTAND THAT AS A MEMBER OF THE GRAND JURY, YOU'RE THE ULTIMATE ARBITER. THEY DON'T HAVE THE AUTHORITY TO HAVE A CASE GO FORWARD WITHOUT YOU AND FELLOW GRAND JURORS' APPROVAL. I WOULD WANT YOU NOT TO JUST AUTOMATICALLY DEFER TO THEM OR SURRENDER THE FUNCTION AND GIVER THE INDICTMENT DECISION TO THE U.S. ATTORNEY. YOU HAVE TO MAKE THAT INDEPENDENTLY.

YOU'RE WILLING TO DO THAT IF YOU'RE RETAINED HERE?

PROSPECTIVE JUROR: I'M NOT A PERSON THAT THINKS OF ANYBODY IN THE BACK OF A POLICE CAR AS NECESSARILY GUILTY, AND I WOULD DO MY BEST TO GO AHEAD AND BE OBJECTIVE. BUT AGAIN, JUST IN THE NAME OF FULL DISCLOSURE, I FELT LIKE I SHOULD LET YOU KNOW THAT I HAVE A VERY STRONG PRESUMPTION WITH RESPECT TO ANY DEFENDANT THAT WOULD BE BROUGHT IN FRONT OF US.

THE COURT: I UNDERSTAND WHAT YOU'RE SAYING. LET ME TELL YOU THE PROCESS WILL WORK MECHANICALLY. THEY'RE GOING TO CALL WITNESSES. AND WHAT THEY'RE GOING TO ASK YOU TO DO IS EVALUATE THE TESTIMONY YOU HEAR FROM WITNESSES.

BEFORE YOU REACH A POINT WHERE YOU VOTE ON ANY INDICTMENT, THE U.S. ATTORNEY AND THE STENOGRAPHER LEAVE. THE ONLY PEOPLE LEFT WHEN THE VOTE IS TAKEN ARE THE GRAND JURORS THEMSELVES. THAT'S THE WAY THE PROCESS IS GOING TO WORK.

YOU'RE GOING TO HAVE TO SAY EITHER "WELL, IT HAS THE RING OF TRUTH TO ME, AND I THINK IT HAPPENED THE WAY IT'S BEING SUGGESTED HERE. AT LEAST I'M CONVINCED ENOUGH TO LET THE CASE GO FORWARD" OR "THINGS JUST DON'T HAPPEN LIKE THAT IN MY EXPERIENCE, AND I THINK THIS SOUNDS CRAZY TO ME. I WANT EITHER MORE EVIDENCE OR I'M NOT CONVINCED BY WHAT'S BEEN PRESENTED AND I'M NOT GOING TO LET IT GO FORWARD."

CAN YOU MAKE AN OBJECTIVE ON FACTS LIKE THE ONES I'VE JUST DESCRIBED?

PROSPECTIVE JUROR: I WOULD DO MY BEST TO DO THAT. I CERTAINLY WOULD WANT ME SITTING ON A GRAND JURY IF I WERE A DEFENDANT COMING BEFORE THIS GRAND JURY. HAVING SAID THAT, I WOULD DO MY BEST. I HAVE TO ADMIT TO A STRONG BIAS IN FAVOR OF THE U.S. ATTORNEY THAT I'M NOT SURE I COULD OVERCOME.

THE COURT: ALL I'M TRYING TO GET AT IS WHETHER YOU'RE GOING TO AUTOMATICALLY VOTE TO INDICT IRRESPECTIVE OF THE FACTS.

A FEW YEARS AGO, I IMPANELED A FELLOW HERE THAT WAS A SERGEANT ON THE SHERIFF'S DEPARTMENT. AND YEARS AGO WHEN I WAS A PROSECUTOR, I WORKED WITH HIM. HE WAS ALL ABOUT ARRESTING AND PROSECUTING PEOPLE. BUT WHEN HE GOT HERE, HE

SAID, "LOOK, I UNDERSTAND THAT THIS IS A DIFFERENT FUNCTION. I CAN PERFORM THAT FUNCTION." HE SERVED FAITHFULLY AND WELL FOR A NUMBER OF -- OVER A YEAR, I THINK. 18 MONTHS, MAYBE. HE EVENTUALLY GOT A PROMOTION, SO WE RELIEVED HIM FROM THE GRAND JURY SERVICE.

BUT, YOU KNOW, HE TOOK OFF ONE HAT AND ONE UNIFORM AND PUT ON A DIFFERENT HAT ON THE DAYS HE REPORTED TO THE GRAND JURY. HE WAS A POLICEMAN. HE'D BEEN INVOLVED IN PROSECUTING CASES. BUT HE UNDERSTOOD THAT THE FUNCTION HE WAS PERFORMING HERE WAS DIFFERENT, THAT IT REQUIRED HIM TO INDEPENDENTLY AND OBJECTIVELY ANALYZE CASES AND ASSURED ME THAT HE COULD DO THAT, THAT HE WOULD NOT AUTOMATICALLY VOTE TO INDICT JUST BECAUSE THE U.S. ATTORNEY SAID SO.

AGAIN, I DON'T WANT TO PUT WORDS IN YOUR MOUTH. BUT I DON'T HEAR YOU SAYING THAT THAT'S THE EXTREME POSITION THAT YOU HAVE. I HEAR YOU SAYING INSTEAD THAT COMMON SENSE AND YOUR EXPERIENCE TELLS YOU THE U.S. ATTORNEY'S NOT GOING TO WASTE TIME ON CASES THAT LACK MERIT. THE CONSCIENTIOUS PEOPLE WHO WORK FOR THE U.S. ATTORNEY'S OFFICE AREN'T GOING TO TRY TO TRUMP UP PHONY CHARGES AGAINST PEOPLE.

MY ANECDOTAL EXPERIENCE SUPPORTS THAT, TOO. THAT DOESN'T MEAN THAT EVERY CASE THAT COMES IN FRONT OF ME I SAY, "WELL, THE U.S. ATTORNEY'S ON THIS. THE PERSON MUST BE GUILTY." I CAN'T DO THAT. I LOOK AT THE CASES STAND-ALONE, INDEPENDENT, AND I EVALUATE THE FACTS. I DO WHAT I'M CHARGED

WITH DOING, WHICH IS MAKING A DECISION BASED ON THE EVIDENCE THAT'S PRESENTED.

SO THAT'S THE QUESTION I HAVE FOR YOU. I CAN UNDERSTAND THE DEFERENCE TO THE U.S. ATTORNEY. AND FRANKLY, I AGREE WITH THE THINGS THAT YOU'RE SAYING. THEY MAKE SENSE TO ME. BUT AT THE END OF THE DAY, YOUR OBLIGATION IS STILL TO LOOK AT THESE CASES INDEPENDENTLY AND FORM AN INDEPENDENT CONSCIENTIOUS BUSINESS-LIKE JUDGMENT ON THE TWO QUESTIONS THAT I'VE MENTIONED EARLIER: DO I HAVE A REASONABLE BELIEF THAT A CRIME WAS COMMITTED? DO I HAVE A REASONABLE BELIEF THAT THE PERSON TO BE CHARGED COMMITTED IT OR HELPED COMMIT IT?

CAN YOU DO THAT?

PROSPECTIVE JUROR: AGAIN, I WOULD DO MY BEST TO DO THAT. BUT I DO BRING A VERY, VERY STRONG BIAS. I BELIEVE THAT, FOR EXAMPLE, THE U.S. ATTORNEY WOULD HAVE OTHER FACTS THAT WOULD RISE TO LEVEL THAT THEY'D BE ABLE TO PRESENT TO US THAT WOULD BEAR ON THE TRIAL. I WOULD LOOK AT THE CASE AND PRESUME AND BELIEVE THAT THERE ARE OTHER FACTS OUT THERE THAT AREN'T PRESENTED TO US THAT WOULD ALSO BEAR ON TAKING THE CASE TO TRIAL. I'D HAVE A VERY DIFFICULT TIME.

THE COURT: YOU WOULDN'T BE ABLE TO DO THAT. WE WOULDN'T WANT YOU TO SPECULATE THAT THERE'S OTHER FACTS THAT HAVEN'T BEEN PRESENTED TO YOU. YOU HAVE TO MAKE A DECISION BASED ON WHAT'S BEEN PRESENTED.

BUT LOOK, I CAN TELL YOU I IMAGINE THERE'S PEOPLE IN

THE U.S. ATTORNEY'S OFFICE THAT DISAGREE WITH ONE ANOTHER ABOUT THE MERITORIOUSNESS OF A CASE OR WHETHER A CASE CAN BE WON AT A JURY TRIAL.

IS THAT RIGHT, MR. ROBINSON?

MR. ROBINSON: ON OCCASION, YOUR HONOR. NOT VERY OFTEN.

THE COURT: IT COMES UP EVEN IN AN OFFICE WITH PEOPLE CHARGED WITH THE SAME FUNCTION. I DON'T WANT TO BEAT YOU UP ON THIS, [redacted] I'M EQUALLY CONCERNED WITH SOMEBODY WHO WOULD SAY, "I'M GOING TO AUTOMATICALLY DROP THE TRAP DOOR ON ANYBODY THE U.S ATTORNEY ASKS." I WOULDN'T WANT YOU TO DO THAT. IF YOU THINK THERE'S A POSSIBILITY YOU'LL DO THAT, THEN I'D BE INCLINED TO EXCUSE YOU.

PROSPECTIVE JUROR: I THINK THAT THERE'S A POSSIBILITY I WOULD BE INCLINED TO DO THAT.

THE COURT: I'M GOING TO EXCUSE YOU, THEN. THANK YOU. I APPRECIATE YOUR ANSWERS.